





# The Task Force on Canadian Unity

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## A FUTURE TOGETHER

Observations and Recommendations














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# The Task Force on Canadian Unity

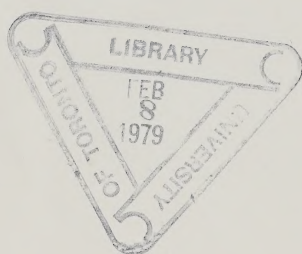
## A FUTURE TOGETHER

Observations and Recommendations

January, 1979

*Canada - Miscellaneous publications*



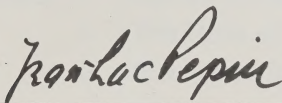


To His Excellency the  
Governor General in Council

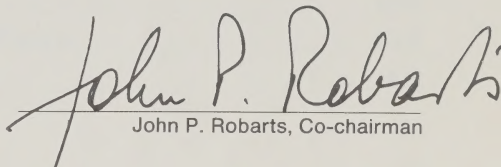
MAY IT PLEASE YOUR EXCELLENCY

We the Commissioners appointed under Part I of the Inquiries Act by Order in Council of 5 July 1977, P.C. 1977-1910, 24 August 1977, P.C. 1977-2361 and P.C. 1977-2362, and 28 February 1978, P.C. 1978-573,

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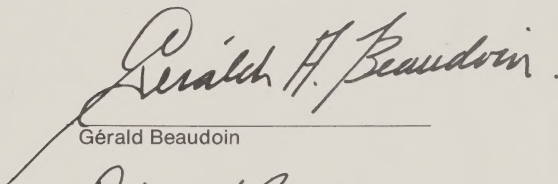


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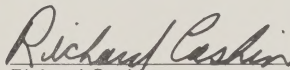


John P. Robarts, Co-chairman

Members:



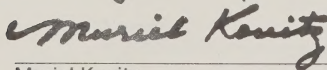
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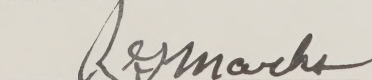
Richard Cashin



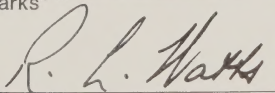
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## Table of Contents

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Chapter	1	Agenda for Change.....	1
	2	The Confederation Crisis.....	9
	3	The Anatomy of Conflict .....	19
	4	Canada and the Search for Unity .....	33
	5	Respecting Diversity.....	43
	6	Unity and the Health of the Economy .....	63
	7	A Restructured Federalism .....	79
	8	A Future Together.....	111
	9	Specific Recommendations .....	119
Appendix	1	Terms of Reference .....	133
	2	The Role of the Task Force.....	139
	3	Acknowledgements .....	145









The Task Force on Canadian Unity was created on 5 July 1977 with a broad mandate to obtain and to publicize the views of Canadians regarding the state of their country, and to provide the ideas and initiatives of the members of the Task Force on the question of Canadian unity. We have been actively engaged in that enterprise for a year and a half.

On 1 September 1977, after our first full Task Force meeting, we published a communiqué in which we expressed our initial impression of the work which confronted us and indicated how we planned to proceed. We said:

The Task Force...recognizes that Canada and its present federal system are under great stress. The creation of the Task Force is itself a testimony to this. All regions of Canada are reflecting and expressing this malaise. The most pressing questions are being raised in Quebec and the Task Force intends to give these high priority. Nevertheless, the concerns of other regions are vitally important and will be given our full attention.

We went on to say that we planned to suggest some "concepts and policies which could constitute some of the elements of a third option for Canada." (The full statement is reproduced as Appendix 2.)

In looking back at that statement of eighteen months ago, we are struck by the degree to which that collective judgement has guided us in our work. Canada and its constitutional system *is* in a protracted state of crisis; the primary, but not the only challenge, comes from Quebec; and the pressing need today, as it was then, is to discover the basis for a fresh accommodation which will permit the people who inhabit this vexing and marvellous country to live together in peace, harmony and liberty.

We embarked on our Canadian tour a few weeks after issuing the communiqué, and it was the beginning of an unforgettable period for us all. Few Canadians are given the opportunity to participate in such an extraordinary experience, and it is something that we will carry with us for the rest of our days. Between September 1977 and April 1978 the Commission visited sixteen Canadian centres from Vancouver to Yellowknife to St. John's, meeting a wide cross-section of Canadians and discussing a bewildering variety of subjects. During these Task Force visits, and between them, we spoke on radio and television shows, to journalists, to individual citizens, to service clubs, to university groups; we also held regular Task Force meetings in Ottawa and elsewhere to review progress, discuss background and policy papers with our staff, and consult with experts of every description. Since the end of our tour, we have held lengthy meetings to continue this work and have met regularly with people who could provide us with necessary information and help us to develop and refine our ideas.

What have we, as eight Canadian men and women, learned from our experience? More, one can say right away, than it will be possible for us to communicate. Each of us will take

away from the past eighteen months a range of personal impressions and insights which it would be impossible to record fully. We were, after all, eight citizens from eight different parts of the country, who came to the Task Force with a diversity of opinions, personal beliefs and—let us admit it openly—some preconceived ideas. We have learned a great deal from Canadians across the country and from one another: in the process, we have gradually found ourselves holding a common purpose and sharing a common point of view. We do not mean to imply that we agree on all things; that would not be true, nor would it be very stimulating. But it is this common point of view, this shared sense of purpose which we have achieved as members of the Commission, that forms the basis of our three main publications.

*A Future Together* is our first publication, and contains the observations and recommendations of the Task Force.

The second publication, *Coming to Terms*, will be a guide to some of the critical words and concepts in the unity debate. It grew out of our experience of the tour and our growing recognition of the fact that there was great confusion abroad in the land, even at the basic level of the meaning of key words and concepts. It is not that we believed or believe now that Canada's problems would be dissipated if we all agreed to attach the same meanings to the same words, but rather that there is often fruitless conflict created as a result of the uncritical way in which ideas are expressed and the confused manner in which all of us are inclined to employ crucial terms. We have tried to draw attention to that fact and to clear the ground to some extent in this volume.

The third publication, *A Time to Speak*, records what we heard as Commissioners on our national tour and what we read in the extensive correspondence which many Canadians directed to the Task Force. We have sought to reflect as faithfully as we could the variety of concerns, opinions and ideas expressed by citizens about their country.

The reader of *A Future Together* will observe that the bulk of the study and recommendations relate to the public policy and constitutional domains, that is to say, to what governments do, how they do it, and the manner in which they are constituted and controlled. The selection of this focus was made quite consciously, and it is perhaps worth while to take a few moments here to explain why.

Many Canadians who appeared before the Task Force argued persuasively that public attitudes are at the root of the crisis: if only we could develop the attitudes required to make our present institutions work, there would be no need to reform our constitution. We acknowledge the force of this argument, and have attempted in our contacts with the public and as far as possible in our reports to encourage the development of attitudes and beliefs more conducive to national unity. However, to urge people to change their attitudes is not in itself a sufficient response to Canada's crisis, which is why we have gone beyond that to make proposals for institutional reform. There are several factors to consider here.

First, attitudes do not exist, nor do they change, in a vacuum. They are commonly formed in response to certain social circumstances and particular institutional arrangements. Thus they are more likely to change as a result of altered circumstances or arrangements than as a result of simple exhortation. It is our hope that institutional and policy reform will encourage the development of attitudes which support Canadian unity.



Secondly, it is not easy to effect changes in attitude directly, certainly not in a report of a commission of inquiry: it is worth considering, for example, what our report might have looked like if our dominant objective had been to suggest directly the transformation of attitudes in Canada—rather like, perhaps, the Sermon on the Mount or a textbook in social psychology.

The third factor is the timetable Canadians will have to meet. It is our conviction that Canadians are in the midst of a crisis which requires a rapid and determined response; it is our further belief that it is inevitably our central and provincial governments that will be our main agents of action and change. If this is so, it is incumbent on us to look to what governments can do for and with the Canadian people—and do quickly. This is not in any sense to downgrade the significance of a richer understanding and a greater generosity of spirit on the part of all Canadians; these are clearly of the utmost importance. But they cannot possibly come quickly enough and forcefully enough to constitute a sufficient response to the challenges facing the country during the next couple of years. There is no doubt, for example, that we need to reassess the adequacy with which our educational systems prepare our children for the responsibilities of citizenship, but educational reform will not by itself be a convincing response to the challenge Quebec is currently posing to the rest of the country.

The fourth factor is the expectations of people, the manner in which they anticipate the current stresses will be relieved. The crisis admittedly has many causes and dimensions, but a large number of Canadians assume that it is in the political and constitutional arena that Canada's problems will be primarily resolved. An expectation of this kind, when it grows strong enough, develops a momentum and integrity of its own. This, we believe, has occurred to such an extent that it is now inconceivable that a settlement satisfying to a majority of Canadians could be reached in the absence of political and constitutional reform.

These, then, are the main factors which have led us to devote primary attention to those activities broadly within the control or subject to the influence of governments. Since this is so, however, we wish to state plainly here some of our thoughts on attitudes and outlook which may not receive as full expression elsewhere in the report.

The Task Force was created to examine and report upon problems relating to disunity in Canada, and people were invited to attend the hearings to speak their minds on this subject. It is therefore not surprising that we heard more about what is wrong with this country than about what is right, although positive opinions were certainly not absent. All of us were struck by the astonishing array of grievances, complaints and problems that were paraded before the Commission. As often as not, each was advanced as *the* cause, or the major cause of the country's disunity.

In a few cases, the analysis of the country's ills seemed to be the product of a narrow and self-serving preoccupation; in most cases, however, the diagnosis was offered by conscientious and well-meaning citizens whose concern transparently was not with self but with country. As such, these citizens bore witness with their attitudes and very identity to the diversity of which so much has been made in Canada.

However, one feature of this diversity causes us concern, for it is a diversity in ignorance of itself, where each fragment of opinion is inclined to think that it is the whole. Again and again, people from one group, or one part of the country, or one economic class would engage in an analysis which they believed to be generally true, but which seemed to us, who had just got off the plane from the other end of the country, to be but a small fragment of Canada's reality.

Sometimes the country seemed to us to be composed of a multiplicity of solitudes, islands of self-contained activity and discourse disconnected from their neighbours and tragically unaware of the whole which contained them all. When one spoke, the others did not listen; indeed, they barely seemed to hear. Canadians live in a big, empty land but they congregate in vital, often boisterously energetic communities. Why is it that we have not learned better to employ this century's communications technology to talk together across the empty spaces?

In our encounters with Canadians we discovered—beyond the good will and generosity and simple common sense, of which there is a great deal—instances of suspicion and occasional hostility, envy, intolerance and parochialism. Much of it seemed to be based on ignorance and an instinctive mistrust and fear of those who are different: those who look and dress differently, who speak a different language, who practise a different religion or enjoy unfamiliar customs, who came from somewhere else.

In *A Future Together* we have done what we could to find ways in which our governments and constitutional structure can help to bridge the gaps that keep us apart. But there is a range of concerns that we do not believe we can address very directly here, and that is the dimension constituted by each of us in our attitude to ourselves and one another. In this domain, we believe that Canadians have a long way to travel, and little time to make the journey.

Not only must we learn to accept the fact of diversity, but we must also discover how to cherish and embrace it. If we can learn to believe that our neighbour's differences are not a threat to us and what we stand for, but a part of the neighbourhood within which our own identity finds free expression, we shall have moved a long way toward understanding what the Canada of tomorrow must be about. For we believe that it is only in that fashion that Canadians will establish for themselves a sense of sharing and a common purpose which all can accept without doing violence to their own beliefs and identity.

It is in this light that we understand the terms "national unity" and "Canadian unity." For some people, unity seems to imply the submersion of diversity into one homogeneous mass. For others, it conveys an image of artificial, government-induced flag-waving, and "patriotic" celebrations which do not spring from any natural emotional source.

For the members of the Task Force, however, Canadian unity is neither of these things: it is the sum of conditions upon which the various communities and governments of Canada agree to support and sustain the Canadian state. As such, it endows each of the parts with something it would not have if it stood alone. It is, then, a just union of constituent elements, or, as one dictionary puts it, a harmonious combination of parts.

The full enjoyment of unity in this sense has so far eluded the citizens of this country, but it remains the object of our quest; indeed, it seems to us that the main problem does not lie in preserving or re-establishing unity, but rather in constituting it in the first place.

We do not wish to leave Canadians with a false impression. Canada is a grand and beautiful country, too little known and understood by its people. It possesses natural riches beyond the dreams of most other countries in the world, and freedom prospers here better than in most places. Nevertheless, Canada is passing through a period of travail which is more than a crisis of development; it is a crisis of existence itself.

The agenda for resolving our problems is very full. Our governments are already embarked on a process of constitutional review; federal elections must be held prior to the middle of this year; and the government of Quebec is committed to holding its referendum soon, probably within the next year.

The Task Force has found itself living near the eye of the storm during most of its short life, and at each step of the way it has sought to organize its own activity and timetable in such a way as to assist Canadians as much as possible in coming to terms with the issues confronting their country. Rarely, we think, has a commission of inquiry had to carry on its work in such a highly charged and rapidly changing political environment.

It is in view of the crowded national agenda and the accelerating pace of activity that we have decided to release *A Future Together* at this time. Under different circumstances, we might have wished to take more time, to study and reflect. The urgency of the present situation does not allow us this luxury. We plan to make some of our more detailed background material available subsequently. It is our hope, however, that this report will provide Canadians across the country with an appreciation of the Task Force's position and point of view, and that it may be helpful to the country's political leaders. It contains in its observations and recommendations the core of the Task Force's thinking on the subject of Canadian unity.









**15 November 1976**

The point of departure for the Task Force cannot be other than the election of the Parti Québécois as the government of Quebec on 15 November 1976. That election victory was the culmination of a long historical process; it was also the beginning of a new era in the life of our country. There had been other occasions in Canadian history when provincial governments were elected in opposition to Confederation, but never before had the goal of provincial independence been sought with the firmness of purpose displayed by the leaders of the Parti Québécois. For the first time since it was created in 1867, the Canadian political union faced the genuine possibility of the secession of one of its largest provinces.

While this signal event in the life of our country stimulated a great deal of concern and discussion in the months which immediately followed, we are aware that it has now receded in importance in the consciousness of many Canadians. It is a very human tendency to believe that a problem has ceased to exist the moment it has passed temporarily from view. This is what has happened, we believe, to the issue of Canadian unity, a subject which in the past decade or two has bobbed up and down in public consciousness like a cork in a choppy sea.

This is not surprising. We recognize that even crises can become tedious and difficult to believe in if they go on too long and if nothing seems to happen. Yet this absence of staying power merits concern if one judges that the problems are ripening quietly beneath the surface while people concern themselves with other things. In addition, we have noticed a resulting tendency to treat each disturbing event which pushes itself through the surface as a fresh and novel occurrence, without historical roots and with no intimate connection to a much broader range of concerns.

When the Task Force was created in the summer of 1977, the memory of the Parti Québécois election victory of November 1976 was still fresh in people's minds, and they had not yet grown accustomed to the fact of having a secessionist government in Quebec. But the Parti Québécois has been in power for more than two years now and, in the minds of many people, nothing too dramatic has happened. We are still one country, the government of Quebec and everyone else seem to be carrying on with business as usual, and the date for the Quebec referendum on sovereignty-association seems, like the horizon, to recede as you move toward it. So why worry?

It is our opinion that this attitude is radically in error. Whatever one's preferences may be, the issue of Canadian unity will shoulder its way to centre stage again and again during the next several years.

While we take the election of the Parti Québécois as our point of departure, we do not regard that event, or any single federal election, or the pending Quebec referendum as defining the sense and substance of the issue the Task Force must tackle. Whether the referendum is "won" or "lost," the underlying problems will remain and will have to be confronted. We believe that such events as these should be taken to *symbolize* the

political crisis Canada is facing, rather than to *constitute* it. The political crisis which has led to such occurrences displays historical roots which are much deeper and dimensions which are broader than any such single event can comprehend, and its rhythms of development are slower and more inexorable than a single election or referendum would suggest.

### The recent past

Almost exactly fourteen years ago, the members of the Royal Commission on Bilingualism and Biculturalism warned Canadians that, without fully realizing it, they were passing through the greatest crisis in their history. Although its source was located in Quebec, the size and strategic importance of that province, and the "chain reactions" set off elsewhere, meant that it embraced the whole of Canada. The cause of the crisis, in the opinion of the B&B commissioners, was that "the state of affairs established in 1867, and never since seriously challenged, is now for the first time being rejected by the French Canadians of Quebec."

The fact that so soon after the B&B Commission's diagnosis a secessionist government has assumed power in Quebec shows how accurate it was. But, as the commission itself recognized, the crisis was not really a new one, even at the beginning of the 1960s. In fact, the growing tension in French-English relations in Canada was, as the commission said, "over and above anything that is new, the product and consummation of all the past resentments."

Since the commission made those statements a good deal has been accomplished or attempted by the central and provincial governments to reflect more satisfactorily the French reality in Canada. At the federal level, the main vehicle of reform was the Official Languages Act of 1969 which carried into effect many of the recommendations of the commission. In part as a result of the policies applied under the act, the participation of French-speaking Canadians in the federal public service has increased substantially (although progress at the senior executive level has been slower), and the capacity of the federal public service to serve Canadians in French as well as English has been dramatically extended. In the political domain, too, French-Canadian participation has increased, making it easier for French Canadians to view the institutions of the federal government as common to both the French-speaking and English-speaking citizens of the country. In the last decade, French Canadians have served, for the first time since Confederation, in key economic portfolios, and have taken a wider role in cabinet generally.

At the provincial level, increased recognition has also been given to the needs of the French Canadians, especially in the provinces of New Brunswick and Ontario, where the majority of the French-speaking population outside Quebec live. With an Acadian minority representing a third of its total population, New Brunswick wisely accepted the B&B Commission's invitation to declare itself officially bilingual and has begun the slow process of adapting the structure and services of the province to this linguistic reality. Ontario, on the other hand, with only 5.6 per cent of its population French-speaking, did not accept the recommendations of the commission but has continued the development of French-language services on which it was already embarked. The seriousness of the effort that Ontario has made, for instance, in the field of education, can be glimpsed from the Council

of Ministers of Education's estimate that 93.6 per cent of potential French-language students in Ontario are now enrolled in French-language programs at the elementary and secondary levels.

In the same period, Quebec has embarked on a program of more far-reaching consequence. In the 1960s, the emphasis of Quebec government policy was on the reform of education and the major public institutions (such as the provincial government and Crown corporations) to ensure that French Canadians were equipped to meet the demands of a modern industrial society. Beginning in the late 1960s, the institutional emphasis was further accented by an increased reliance upon linguistic legislation. Extending a policy initiated as early as 1910 (when the Gouin government required public utilities and transportation companies to offer services in French as well as English), recent Quebec governments have attempted to strengthen the economic framework of French-speaking Quebec by a series of linguistic measures such as the Bourassa government's Bill 22 (1974) and the Lévesque government's Bill 101 (1977). A major goal of both measures was to improve the access of French Canadians to the highest levels of business in Quebec by regulating the language of work in the province's leading private corporations. In this way, it was hoped to put an end to the economic disadvantages which French Canadians had long experienced, and which previous governments had hoped for over fifty years to remedy, at the individual level, by means of education.

Since the early 1960s, then, considerable efforts at reform have been made in Quebec, in the other provinces, and in Ottawa. Yet more than a decade after the warning of the B&B Commission about a national crisis, the country has moved to an even graver and more critical stage in its history, symbolized by the election of a secessionist government in Quebec.

### Why are we drifting apart?

Why have the efforts of governments not been able to reduce the tensions which threaten to divide the country? A variety of answers might be given to this question. In the first place, it would be unreasonable to expect any policies, even if they were correct (something which remains to be established), to quickly undo what is the product and consummation of all the past resentments.

In the second place, the very efforts to improve the situation of French Canadians outside Quebec and at the federal level produced a backlash in English-speaking Canada which in turn generated a reverse effect in Quebec. The complaints about "French power" in Ottawa, the resistance to bilingualism in Ottawa and in the English-speaking provinces, served to convince many francophone Quebecers, some of whom were already disposed to believe it, that little accommodation could be hoped for with English-speaking Canada and that the future of French Canada lay henceforth in Quebec alone. The reaction of English-speaking Canada to the air traffic controllers' strike (known in French as the *Gens de l'air* affair) during the spring and summer of 1976 played an important symbolic role in convincing some Québécois of the lack of understanding to be looked for from English-speaking Canada. For many Québécois, the vehemence with which the English-speaking controllers, pilots and public seemed to reject out of hand the right of French-speaking pilots and controllers to work in their own language, even in a province where they formed



a substantial majority, was a clear revelation of the true state of French-English relations in Canada. In this way, the "bilingual backlash," of which the controllers' strike was perhaps the most dramatic example, clearly contributed to the Parti Québécois victory.

But these factors are just the tip of the iceberg. At the base of the renewed crisis are social processes common to all modern societies. The impersonal forces of what the sociologists call modernization—forces such as urbanization, industrialization, mass education, new modes of transportation and communications, and increasing secularization—have had a profound effect on Quebec society, and on Canada as a whole.

Given the functions which provincial governments in Canada are constitutionally called upon to perform, together with the rapid growth in the role and responsibilities of governments in general, it is not surprising that we have seen a vigorous reassertion of the provinces in Canadian federalism. Indeed, part of the explanation of the current political conflict is to be found in the struggle between the central and provincial governments for control over the vastly expanded powers which the process of modernization vests in the state.

However, in Quebec this process has taken a unique form because of the cultural and linguistic vocation of the province. The process of modernization has produced new leaders who are anxious to exercise power but who do not believe that they can achieve the goals essential to their society within the framework of the old power structure of the federal system. This new leadership has an interest, therefore, in the development of the Quebec state as the unique framework of French Canada, and it has been able to mobilize a significant portion of the Quebec electorate to achieve this end. From this perspective, then, what is being sought is not the radical décentralization which appears to be implicit in the goal of sovereignty-association, but the centralization and concentration of power, not in Ottawa, but in Quebec City.

Part of the appeal of this enterprise issues from the fact that the forces of urbanization and industrialization have reduced the influence of some of the old institutional safeguards of French-Canadian society. They have weakened the parish, the Church and the rural community as the framework of French-Canadian society in Quebec and have placed correspondingly greater emphasis on the institutions of the state and of business corporations: hence the ambitions of the new leadership and the legitimacy it has acquired in the eyes of a large portion of the public. This legitimacy is enhanced because the same forces of modernization have weakened the older institutional safeguards of the French-speaking communities outside Quebec, which do not have the ability of the Québécois to fall back upon the power of the state. As a result, the future of those French-speaking communities outside Quebec is put in doubt; and this peril reinforces the tendency of many Québécois to focus their concerns, for all intents and purposes, on Quebec alone.

Other trends of the modern world contribute to this general process. Whereas the era of Confederation was a period when large national states such as Germany and Italy were being forged out of numerous smaller ones, the 1950s and 1960s were a period in which many small states threw off the bonds of European colonialism and emerged independently onto the world stage: at both periods, the international atmosphere undoubtedly influenced the mood and impulse of Quebec.

Contemporary technological and economic changes have tended to centralize bureaucratic and economic power and homogenize social life. Yet this very trend toward centralization and uniformity has produced its own counter-reaction in the reassertion of local identity and autonomy. This is readily apparent, in Europe, for example, where the reassertion of Welsh, Scottish, Breton, Basque and Flemish identities has gone hand-in-hand with the process of economic integration.

Thus paradoxically the process of modernization seems both to submerge and to stimulate the re-emergence of cultural and linguistic loyalties; and this world-wide pattern reinforces the old particularism of Quebec. It lies behind Quebec's drive for increased autonomy, if not independence, and helps to explain the relative inability of reform efforts inside and outside Quebec to reduce the impetus of the independence movement in the last decade.

The same world-wide social forces which are felt in Quebec also affect the rest of Canada, and they have had consequences there which have altered the nature of the unity crisis.

### **Widening the issue**

When the B&B commissioners were preparing their reports in the mid-sixties they could assume certain facts about the country which can no longer be taken for granted. This change reflects the important ways in which the challenge to Confederation has been modified and amplified in the intervening years.

The most important new element in the equation is the growing strength of the other provinces and the regional loyalties that have formed themselves, primarily within the framework of the provinces. A decade ago it was possible for the B&B Commission to minimize the obvious regional differences in Canada and to stress instead the relative unity within each of the two Canadian realities, French and English-speaking Canada. But that is no longer possible. The international tendency toward local particularism and the broad process of modernization which are reflected in Quebec have also taken root in the rest of Canada, reviving the regional tensions which are an old feature of Canadian life but which had remained relatively muted between the Second World War and the 1960s.

The revival of regionalism was assisted by Quebec. By resisting the centralizing impulse of the federal government during the postwar generation, Quebec helped to open the door to a more general provincial renaissance in the sixties and seventies. But this new reality has also widened the issue originally posed almost exclusively by Quebec so that it now spans the Canadian union as a whole. The crisis which the country faces today is not one of Quebec or of French Canada only: it is a crisis of Confederation itself. In this sense, the challenge to the country differs from that of a decade ago and must be considered in much wider terms. To the fundamental challenge of Canadian duality must now be added the other important challenge of Canadian regionalism.

Another factor which also merits consideration is the growth in self-consciousness of Canadians who are of neither French nor British background, and who are sometimes regarded as a third element to be added to the historic fact of Canadian duality. It was indeed the very definition of the country in dualistic terms, both in the mandate and outlook of the B&B Commission, which helped to stimulate the assertiveness of these

ethnic groups, an assertiveness which was consecrated in 1971 by the Trudeau government's policy of multiculturalism. Thus, partly as a result of the government's policy and the response to it in the ethnic communities, the Canadian reality has become more complex, and this complexity must be taken account of in a way that did not seem as necessary a decade ago.

Another social development since the 1960s is the increasingly articulate voice of Canada's native peoples. The dilemma of the native peoples has been a continuing but neglected feature of Canadian life, yet it has acquired a new urgency in recent years, and their place in Canadian society can no longer be overlooked as it frequently was in the previous decade.

A further complicating factor in the equation is the changing condition of the Canadian and world economies. Ten years ago the problems of national unity could be considered without according enormous weight to the economic limits to public policy. With the exception of the short recession at the end of the 1950s, Canada and other industrialized countries had enjoyed uninterrupted economic growth and prosperity since the Second World War. It was still possible to believe that such growth would continue indefinitely and that the choices which Canadians might make about the future of their society were not limited by severe economic constraints.

Since the early seventies, however, we have had far less room to manoeuvre. The economic performance of most industrialized nations has remained sluggish throughout the decade and, what is more, harsher economic conditions have laid bare the long-term structural weaknesses and vulnerability of the Canadian economy. We can no longer hope to buy our way out of our difficulties. Our options are now limited to a degree that was not apparent a decade ago and, whatever happens, hard choices will have to be made.

Another new factor concerns the central government itself. Fifteen years ago, it stood high in the minds of a large number of Canadians, and was widely regarded with respect and a feeling of loyalty. Even those who felt little loyalty to it at least respected its efficiency and competence. Today, that is much less true; "Ottawa," as we found on our tour, is for many Canadians synonymous with all that is to be deplored about modern government—a remote, shambling bureaucracy that exacts tribute from its subjects and gives little in return. We recognize that this is an unfair stereotype, and that in another fifteen years the pendulum may have swung back to the other extreme; but the fact that this view has such a widespread appeal today is one of the significant elements that must be borne in mind in any attempt to improve our situation.

### **Confederation: a crisis and an opportunity**

For these reasons, Canadians now find themselves in a situation quite unlike any they have faced before. While we have had major crises in the past, this one is qualitatively different. The diverse elements already described, and others besides, have converged at one point in time and, partly as a result of this convergence, the rather rough-and-ready consensus which once ensured the reasonably effective governing of the country is at the point of breaking down.



People do not normally calculate carefully the costs and benefits of membership in a country; citizenship tends to be accepted as a matter of course. But people today, and not exclusively in Quebec, are asking fundamental questions about their country. Instead of being an unquestioned framework within which life's problems are addressed, the country itself has been placed in doubt.

The widespread dissatisfaction with the present arrangements of the Canadian federation which we have witnessed on our tours might not have crystallized at this time had it not been for the election of a secessionist government in Quebec. The victory of the Parti Québécois has served to focus this dissatisfaction and to legitimize the questioning of the fundamental condition of Canadian nationhood. In so doing, it has plunged the country into a crisis graver than any it has known before.

The election of the Parti Québécois, and all that it entails, has compelled or allowed Canadians to confront problems which they would have been obliged to face sooner or later. It would be foolish for Canadians to think of the challenge which lies ahead solely in terms of the forthcoming referendum on the independence of Quebec. A victory for the federalist cause in the referendum will accomplish little, if no effort is made to address the sources of discontent which have occasioned it.

Yet it would be a mistake to regard this situation as a crisis only, for it is also an opportunity—an opportunity to build anew that sense of common interest, of common purpose and of common will which the present crisis shows us to have been so seriously eroded. Further erosion of the common will in which our society is ultimately grounded would almost certainly spell the end of the Canadian experience.







We believe that the heart of the present crisis is to be discovered in the intersecting conflicts created by two kinds of cleavages in Canadian society and by the political agencies which express and mediate them. The first and more pressing cleavage is that old Canadian division between "the French" and "the English." We will consider the present configuration of this historic problem of Canadian duality in a moment. The second cleavage is that which divides the various regions of Canada and their populations from one another. Regionalism, like duality, also has an extended lineage in Canadian social, economic and political life, and we pursue this matter subsequently as well.

Both duality and regionalism, then, are deeply rooted in our history and are major elements in the social and economic foundation of Canada. The shape of these two structural forces of Canadian life has altered quite rapidly in the past quarter of a century as power has shifted within and between various groups and as their aspirations have changed. Canada is in no sense unique in experiencing such stresses; indeed, a survey of the international scene will reveal that "national unity" is a rather scarce commodity in the world community. However, it is the particular expression of these stresses in Canada that has brought us to our present pass, where the existing constitutional and political arrangements no longer adequately reflect or express the main social and economic forces which are at work in the country.

In our judgement, the first and foremost challenge facing the country is to create an environment in which duality might flourish; the second is to provide a fresher and fuller expression of the forces of regionalism in Canada's constitutional system and power structure. We wish to emphasize that it is in the context of the *present* crisis that we assign priority to these two, and we do so for a very simple reason. Each, if ignored or left unsatisfied, has the power to break the country, and each must accept the other if a new period of harmony is to be achieved.

As for other important contemporary issues or priorities, such as native rights and cultural pluralism, we believe we have a responsibility to suggest how they are affected by the interplay of duality and regionalism and how they might be recognized in a restructured federalism. These matters merit and must receive the most careful attention, but we have found it necessary to concentrate our efforts in order to ensure that we are striking through to the centre of the present crisis. We recognize, however, that at a time when conflicting issues such as native land claims and the development of northern energy resources to supply the demands of southern Canada converge as they do today, the future confronts us all with difficult choices and challenges. One of our concerns is that Canada will be in no position to respond creatively to such other matters as these if we are unable to relieve the main tensions arising from duality and regionalism.

But what, more precisely, do we mean when we speak of duality and regionalism?

### Duality

To take French-English duality first, it could signify the thesis of the two founding peoples, the two-nations theory, the notion of the British North America Act as a pact between two peoples, the simple existence of two languages in Canada, or the distinction between Quebec society on the one hand and the rest of Canada on the other.

None of these, and no other, so far as we know, has received unanimous support. The native peoples (the country's real founders) understandably find the two-founding-peoples concept of duality offensive. English-speaking Canadians find it difficult to conceive of two nations and doubt whether there was a pact in 1867. Québécois believe that any attempt to consider French-speaking Quebec simply as a branch of French Canada belittles its role. Francophones outside Quebec and anglophones within Quebec are wary of any undue emphasis on the cleavage between Quebec and the rest of the country because it has the effect of submerging them within each majority society.

It is clear to us that duality is a multifaceted concept. The general understanding of it can be expected to alter as the society which it describes evolves, and the particular dimension which is emphasized will vary according to one's preoccupations, experience and situation in the country.

Our use of the concept of duality in this report will reflect this variety, and the reader will observe that we find several different dimensions of it worthy of consideration. The historic relationship between French and English-speaking peoples in the upper half of North America has been problematic for centuries, and the conflicts between the two have been fed from many sources and sustained in many areas of life: in religious practices, cultural outlook, at work, in school, in patterns of settlement, in the exercise of political power, and in many other ways as well.

In addition, the question of the relationship between French-speaking and English-speaking Canadians takes quite different forms in different parts of the country, depending on such things as the relative size and distribution of the two communities in a given area, the economic relationships that prevail between the two, and their relative political power and aspirations. Because of these and other factors, the case of the English-speaking minority in Quebec, for example, is radically different from that of the Franco-Ontarians; and—again for similar reasons—the position and prospects of the French-Canadian minorities in the western provinces are not only distinguishable from one another, but also very different from the position and prospects of the French-speaking communities of Ontario.

New Brunswick is a special case, for nowhere else are the two sides of the duality more evenly balanced. With its French-speaking Acadian community constituting a third of the population, New Brunswick in some ways is a microcosm of Canada as a whole, and it is perhaps significant that it is the only province that has adopted language legislation similar to that of the federal government. With its distinctive history of duality, New Brunswick faces particular problems and opportunities in establishing a just relationship between the province's two linguistic communities.



Our report thus seeks to reflect the complex and multifaceted character of duality, but the reader will also find that it is shaped by a certain emphasis and preoccupation which we wish to make clear at this point. The dominant interpretation of duality which commends itself to the Task Force, and which we think must receive the attention of the country as a whole, is that which bears most directly on the crisis as it manifests itself today. While we freely acknowledge that duality is many-sided, we would nevertheless insist that to confront the heart of the issue today is to address one main question, namely, the status of Quebec and its people in the Canada of tomorrow. While the origins of the crisis are many, its resolution must necessarily be primarily political and constitutional in nature, and aimed at securing if possible a satisfactory position for Quebec and its people within Canada as a whole.

Our understanding of duality is shaped by this perception, and our emphasis in the balance of this report will be on Quebec's political and constitutional position and the relationship which in our judgement should prevail between the Québécois and other Canadians. We repeat that this will not be an exclusive preoccupation which dismisses or denies other dimensions of duality, such as the cultural and the economic, but rather an emphasis and an orientation.

### Quebec

We contend, therefore, that the essential condition in recognizing duality within Canada at the present time is to come to terms with modern Quebec. Quebec will continue to be the pillar of the French fact in all of North America; it will perform this function inside the Canadian federal system or outside it. So the challenge is not to try to confer on Quebec a role that it has in any case played for centuries, but to demonstrate that it is a role which can be played more effectively within a restructured federal system which is expressly cognizant of Quebec's distinctiveness and its sources.

One can readily identify several factors which have led to the emergence of a distinct society in modern Quebec. We have identified six: history, language, law, common origins, feelings and politics—which, together with others, have led to the development of a distinct society in modern Quebec.

The first, then, is history—the legacy of over three hundred years of the continuous development of a people. During much of this period, but particularly after Confederation, it was possible to speak of a single French-Canadian community which extended to many parts of what is now Canada and to which Quebec contributed a substantial portion of the leadership and the vision to sustain it. French Canada, like English Canada, was knit together from distinct regional societies which, over time, came to think of themselves, for at least some purposes, as one. However, the changes in Canadian social structure since the Second World War have drastically weakened the organic links between these communities. What now is emerging from the old French Canada is a strong and vital Quebec, and many more vulnerable smaller and weaker French-Canadian communities in other provinces, each of which has been forced by circumstances and a constant threat of assimilation to set its own course independently of, and sometimes in opposition to,

developments within Quebec. This process, rooted in the history of Canada generally, would by itself designate Quebec as the most viable and important locus of the French culture in North America; yet there are other, equally important, factors.

The second important factor is language. Quebec is home to over 85 per cent of all citizens who speak French, and 81 per cent of Quebec's population is French-speaking. Current demographic data for Canada as a whole reveal a growing linguistic territorial concentration which is rendering Quebec increasingly French and the rest of the country, excluding New Brunswick, increasingly English.

A third factor is Canada's legal duality. Quebec was authorized by the Quebec Act of 1774 to retain its French civil laws. One year before Confederation, the civil laws were codified along the lines of the *Code Napoléon*. Amended from time to time since then, the civil code is the basis of Quebec's private law while the other provinces have lived under the English common law tradition, thus producing two distinct legal systems.

A fourth factor contributing to Quebec's unique character is the distinctive ethnic group or people which French Canadians form. The majority of these are persons whose families came to North America several centuries ago. While the more recent arrivals from France have been somewhat less likely to settle in Quebec, a majority still does so. This means that in addition to the linguistic distinctiveness of the province may be added the fact that the ethnic origins of its majority are shared. Quebec is simply not a multicultural society in the same sense as many other parts of Canada. Although it has become more ethnically diverse in the last few decades, particularly in the Montreal area, Quebec is and will remain predominantly French in language and in ethnicity; it is unique in Canada on both of these counts.

There remain two other factors which must be added. The legacy of history, a shared language and common origins are all important social facts in their own right, but they say nothing about the feelings of Québécois, a fifth factor which marks Quebec off from the other provinces. The shared desires, aspirations and even the fears of the collectivity provide perhaps the most compelling evidence in support of Quebec's cultural distinctiveness.

For the longest part of Quebec's history one theme dominated the cultural life of the collectivity. That theme was *survivance*, or sheer survival. This overriding concern for the maintenance of the way of life of a people coloured the relationship between Quebecers and their compatriots, and it continues to do so. Yet only an insensitive observer of the life of the province could fail to note a substantial shift in approach in which that collectivity's concern for survival is now expressed by the thoroughly contemporary and dynamic pursuit of its own development, or what has been often described as *épanouissement* (literally, "blooming," "blossoming").

Psychologically, the transition from *survivance* to *épanouissement* has been accompanied by a remarkable alteration in Quebecers' attitudes toward themselves. This may be described as the shift in self-perception of French-speaking Quebecers from a Canadian minority only grudgingly accepted in many parts of Canada to a Québécois majority, increasingly confident and determined to secure its future.

This transformation is reflected in the very vocabulary that Quebecers have used to describe themselves. Originally, the French-speaking people of Quebec called themselves *Canadiens* and referred to the English-speaking people as *les Anglais*. In the middle and late nineteenth century, they began calling themselves *Canadiens français* to distinguish themselves from English-speaking Canadians. In recent years, however, more and more have adopted the name and identity of *Québécois*, underlining this sense of themselves as a majority, as a people.

Parallel to this development, French Canadians elsewhere in Canada increasingly have come to see themselves as a part of their provincial communities rather than as members of a comprehensive French Canadian society. They describe themselves as *Franco-Ontariens*, *Franco-Manitobains*, *Fransaskois*, and collectively as *les francophones hors Québec*, outside of Quebec.

These changes suggest the sixth and final factor contributing to the distinctiveness of the province of Quebec—namely, the changing meaning of politics to a society in transition. The psychological passage from minority to majority has been marked by the wholesale appropriation of the state for this cultural struggle. The last several decades have produced leaders in Quebec, as elsewhere, who are prepared to employ the resources of the provincial state to achieve collective goals and to promote rapid social and economic development.

History, language, law, ethnicity, feelings and politics render Quebec at once a society, a province and the stronghold of the French-Canadian people. Taken together, these factors produce in the *Québécois* a vision of Quebec as the living heart of the French presence in North America; collectively they are as strong or as weak as Quebec is: no more, no less. It is this reality with which other Canadians and the Canadian federal system must come to terms. For the people of Quebec, the question that remains to be answered is whether they can better serve their future within Canada and its federal system or whether they would do better standing on their own.

## Regionalism

What of regionalism, which we have identified as the second line of cleavage in Canadian society which needs attention in the present crisis? Two observations come immediately to mind.

First, one cannot begin to consider regionalism as a force in Canadian life without recognizing the interrelationships which exist between it and the concept of duality. Regionalism and duality are not isolated phenomena. They are ways of describing the same realities from different perspectives. They interpenetrate and influence each other to such a degree that duality can be regarded, in a sense, as a regional phenomenon, while, as we have seen, many of the regions incorporate elements of duality.

Second, very little investigation is required to reveal that, as in the case of duality, there is a multiplicity of meanings and associations that can be attached to the notion of regionalism in Canada.

For a start, most Québécois we observed, are inclined not to see regionalism as a very significant factor in Canadian life; they view Canada essentially in terms of the relations between French and English-speaking Canadians or between Quebec and the rest of Canada. As a result of this dualistic outlook, they are sometimes tempted to think of English-speaking Canada as one monolithic entity.

However, English-speaking Canada is a much less monolithic and homogeneous society, and a much more diverse and complex one, than the Québécois often assume it to be. This complexity needs to be taken into account in the analysis of Canadian problems and in the search for solutions, because it determines the way in which English-speaking Canadians look at their country and in which they react to stresses like those of the present.

Indeed, the regional nature of English-speaking Canada complicates its perception of French-speaking Canada, just as the comparatively homogeneous and concentrated character of Quebec society complicates its perception of the rest of the country. Because many English-speaking Canadians think of their country as a cultural and geographic mosaic, they tend to regard French-speaking Canadians as members of one of the many minority groups that make up the Canadian mosaic. They do not spontaneously think of their country in a dualistic way, though some have begun to do so over the course of the last decade or so.

It is not an easy matter, then, to settle on a single notion of regionalism in Canada or one definition of a region. Some economists have identified the thirteen major urban systems of Canada as the most plausible economic regions of the country. A similar perspective treats regionalism as an intra-provincial phenomenon and distinguishes between the populous, industrialized regions of a province (for example, British Columbia's lower mainland, southwestern Ontario or Montreal Island) and those other parts of the province which are economically and socially distinct.

The regions of Canada can also be seen as four or five units composed of various combinations of the following: the Atlantic region, Quebec, Ontario, the Prairies and British Columbia (or sometimes the West and the North). These ways of looking at the country are sometimes useful in economic analysis and at the federal level when for certain purposes of administration the provincial boundaries are less important.

The Task Force, like many other national bodies, was appointed on a regional (as well as on a dual) basis, and we will employ the four or five-region approach from time to time in our report. If we do not do so more often, it is because this approach has two drawbacks. First, the interests of the individual provinces within these regions are not always identical: those of Newfoundland, for example, are distinct from those of New Brunswick, just as those of Manitoba are more similar in some ways to those of the central provinces than to Alberta.

In the second place, regional communities require an institutional framework if they are to become viable units which can express themselves and organize their collective life in an effective manner. For that reason, it seems to us that the provinces and the northern territories are the basic building blocks of Canadian society and the logical units on which



to focus a discussion of Canadian regionalism, even though they may not always be the most "natural" regions from an economic or other point of view. They are, nevertheless, the political frameworks through which the various regional communities express and will continue to express themselves. We see no trends which allow us to believe that the people of any Canadian province are ready to abandon their traditional provincial units in favour of larger regional structures, even though in some cases, and especially in the Maritimes, groups of provinces are prepared to cooperate to an increasing extent in common endeavours for the common good.

In this report, then, we will use the concept of regionalism in more than one way. Sometimes we will use it to mean economic and geographic regions transcending provincial boundaries. But more often we will use it to designate the provinces themselves. The provincial political institutions are the primary frameworks through which regional populations can organize and express themselves, and their existence serves in turn to develop the social networks and interests based on them, thus reinforcing the provincial focus of regionalism.

Some people, we have noticed, appear to regard regionalism as something apart from provinces and provincial societies, and would prefer that we use the term provincialism to describe what we have primarily in mind. We have chosen not to follow this advice. We do not see that regionalism and provincialism are or can be mutually exclusive, even if the "fit" is not perfect in every case; Ontario, in a five-region Canada, for example, is both a region and a province, even if Prince Edward Island is not. Given the fluid character of regionalism, there are legitimate grounds for different choices, and for the purposes of the Task Force we think ours is the most appropriate.

Our conclusion, then, with respect to regionalism parallels our judgement about duality in two ways. First, we accept both of them as basic social and political realities, but we also recognize the legitimate claims of both and the potential they offer to enrich and diversify Canadian life. In other words we accept their existence; we also recognize their value. Second, just as we contend that, for a complex variety of reasons, duality must today be approached primarily (although not exclusively) through the medium of Quebec's relations with the rest of Canada, we also believe that regionalism in Canadian life is expressed primarily (although, again, not exclusively) within the framework of the provinces, and we regard the provincial and territorial governments as critical agents in articulating the concerns and aspirations of these regional communities.

## Regionalism in English-speaking Canada

Because of the concentration in the following pages on the regional and cultural diversity of English-speaking Canada, we sense that it would be possible for us to appear to downplay consideration of some commitments which are shared by the vast majority of English-speaking Canadians. So that there is no doubt as to the views of the Task Force on these common commitments, we shall give them our full attention here.

We believe that central to an understanding of English-speaking Canadians is the fact that they share elements of what could be called a common "political culture." That is, most

English-speaking Canadians are strongly committed to the maintenance of a united country from sea to sea, to the political institutions and traditions which sustain a parliamentary form of democratic government, and to a federal system. There are quite naturally significant variations of opinion on each of these items, but we nevertheless observed a widely shared commitment to them among the great majority of English-speaking Canadians.

We would not want to leave our readers with the impression that these commitments are to be found uniquely among English-speaking Canadians; many French-speaking Canadians are as strongly committed to a united Canada, federalism and parliamentary government as long as there are reforms. Nevertheless, it is important to take into account the relative unanimity with which support for the basic aspects of our federation, though not its current operation, is voiced throughout English Canada.

Despite these shared commitments, and the network of political, economic and cultural institutions which link and bind together English-speaking Canadians in all parts of the country, the current crisis of Canadian unity has not had the effect of eliciting from anglophones throughout Canada a single, unified response. The Task Force is of the view that this lack of unanimity of opinion among English-speaking Canadians on the present crisis and on many other matters is quite natural.

We would identify five principal sources of diversity in English-speaking Canada: geography, history, economics, ethnicity and federalism itself.

To take geography first, the size and physical character of what is now Canada has always been a major force acting upon the peoples inhabiting this part of the world. It is an old cliché to say that Canada was knit together in defiance of geography—a view that, as some writers have pointed out, must be qualified by the unifying role of our waterways—but however it is qualified, the fact remains that Canadian unity has always had to struggle against physical barriers which divide its territory into at least five distinct geographical areas, and subdivide these into many more.

The second source of diversity, history, supplements the first. For much of our past, the ties between the regions have been very tenuous, if they existed at all. Geography and history combined to produce patterns of settlement which have played a continuing role in shaping the regional character of the country. If one studies the so-called "Vinland Map," one of the earliest European maps to show the coastline of northeastern North America, one is struck by the fact that "Vinland" appears as the last of a string of islands extending westward from northern Europe. This striking visual image expresses what is a fundamental reality for much of early Canadian history: the various regions of what is now one country were settled and developed by Europeans rather as "islands" unto themselves, largely unrelated to their neighbours, but linked by the sea to the mother countries and to other parts of the world. Before Confederation, the regions of present-day Canada were rather like a bunch of balloons, unattached to each other but held, by separate strings, in one hand.

Among its other accomplishments, Confederation associated the English-speaking people of four provinces in a single state, and provided a set of indigenous institutions having a



claim on their loyalties larger than the colony or province. Loyalties to the province, which are particularly marked throughout Canada, antedate loyalty to the federation for English Canadians just as they do for French Canadians. Evidence that these pre-existing loyalties were never to be lightly discarded by English-speaking Canadians is plentiful in our history, as is suggested by the fact that the original Confederation agreements hardly received what one might call “massive” public support. There are many residents of the Maritime provinces today who preserve a good deal of skepticism about whether the political union called Canada has evolved in quite the way their representatives at the Charlottetown, Quebec and London conferences had intended.

To many foreign observers, the fact that Confederation is widely evaluated from the particular point of view of how given provinces have fared over the years is a remarkable feature of Canadian life. In other countries, cleavages such as social class, religion, race or creed have been of decisive importance to the collective or political lives of their citizens. In Canada, how much the people of any given province or region have participated in the benefits of the federation, or shared in its costs, has been at the forefront of our politics. And, we believe, this historically based reality is equally prevalent today. For many, perhaps most, English-speaking Canadians, a key element in how they evaluate their federation lies in the treatment it accords, or is felt to accord, their province, its natural resources, its industries, its population, and their particular priorities.

As these words suggest, a third source of regionalism, resulting from both history and geography, is economics. Because of the physical distinctions and distances between its various regions, the country has developed a somewhat unbalanced economic structure. Because the provinces are unequally endowed with natural resources and population, because basic industries vary greatly from one region to another, because geography grants them unequal access to both domestic and foreign markets, the level and character of economic development is very uneven across the country. This unequal distribution of economic well-being has traditionally been an important factor contributing to regional discontent and continues to weaken Canadian unity today.

A fourth source of the cultural and regional diversity of English-speaking Canada is ethnicity. The dual nature of our population was of course demonstrated in our earliest census. However, even if the “English” half of the duality were today still comprised almost exclusively of those of British origin, as it was in 1871, cultural differences even within it would nevertheless be quite pronounced. For one thing, British origin groups together the Irish, English, Scots and Welsh—peoples who historically have only rarely been found in complete agreement. For another, the vast expanse of Canadian territory, the fragmented nature of our economy, the unequal endowment of the provinces, and even such minor factors as variation in climate would soon assert themselves by producing, as such factors produce in every large country, tangible differences in the pace of everyday life, in occupation and, eventually, in identity.

Of course, the facts of the matter are that English-speaking Canada has become much more diverse in terms of ethnicity. Canadians of ethnic origins other than French or British have been part of the country virtually since its creation. They have settled vast parts of its territory, have contributed to its development, and continue to blend their efforts with one

another and with all other Canadians to produce better lives for themselves and their children. In cultural terms, the importance of this influx has been enormous.

In coming to Canada, members of the other ethnic groups were not able, of course, to transport their complete culture from their native lands. They brought instead habits, practices, languages, traditions and outlooks, many of which were not common to the majority of those they encountered in Canada. In these cultural heritages, incomplete as they necessarily were, arriving immigrants and their offspring found and find a measure of identity and, very frequently, a source of pride. They also found in Canada a country which was not expressly dedicated to developing a common culture into which they were called upon to fit. Rather, they found a country whose very existence was predicated on the idea that it was not necessary to have a single language and culture to have a united people.

Wherever and whenever they arrived, immigrants from around the world have conducted their lives in Canada as part of a regionally diverse society. In some cases, they were able to influence the development of a city or province virtually from the start. In others, they were able to contribute perhaps less basically to their immediate surroundings. All of those who came have contributed something to Canada, and most of these contributions enlivened the cultural atmosphere of English-Canadian towns and cities, and continue to do so. This has been anything but an evenly distributed process, and it has meant more to some regions than others. But the result is that "English" Canada is composed of many communities and groups who have in common principally the fact that they now share a language and a commitment to Canada.

In summary, ethnicity may not be the decisive factor that guaranteed the cultural diversity of English Canada, but it has been a major factor in reinforcing this diversity. It has interacted with regionalism in several ways, in different times and places, with the result that the two factors are so fused in their effect that they may never be fully disassembled.

We turn now to the fifth factor which produces the cultural diversity of English Canada—federalism itself. While Canada may be a union of peoples or nationalities, it is a federation of provinces. From the start, territory was seen to be the natural basis of division for purposes of creating a wider political union. We have already mentioned some historical reasons for this choice. We now wish to discuss the consequences.

The British North America Act of 1867 grants, or has been interpreted to grant, quite substantial powers to the provincial governments of Canada. They are responsible at the present time for many of the most basic and costly services governments anywhere are called upon to deliver to citizens: health care, social services and education, to name a few. In giving provinces these weighty responsibilities, the BNA Act served to reinforce Canadian regionalism by permitting the development of provincial political institutions of sufficient size, authority and importance to undertake, in addition to the provision of certain services, a more general role of expressing regional views without regard to jurisdiction. Aggressive, well-staffed provincial governments have come, in other words, to represent the people of the provinces they serve in a number of ways, and not solely in the ways set out as provincial responsibilities in our constitution.

This is certainly the case in Quebec. The provincial government there has become the main instrument of Québécois aspirations. In English-speaking Canada, several provinces have taken similar, if less dramatic, initiatives to support and encourage what amounts to little less than the development of provincial societies. Some observers believe that strong provincial governments have been at the forefront of this process, have actually created the demand for increased provincial government activity. Others believe that the provincial governments of English Canada have been responding to deeply felt desires of their citizens for government that is close to the people.

Whatever the exact sequence (and it may vary in different provinces), the fact remains that the formal institutions of Canadian federalism have been a significant factor supporting the development of a regionally diverse English-Canadian society. This is a process which has come to fruition only in the last few decades. The provincial governments of many provinces in English-speaking Canada join the government of Quebec in calling the central government to account for its interventions in what they consider their own spheres of jurisdiction and for the more general treatment of the people of their province by federal authorities.

These five factors—geography, history, economics, ethnicity, and the formal institutions of Canadian federalism—have, then, helped to create and sustain a vigorous regionalism in English-Canadian life, and they will no doubt continue to do so in the future.

## Conclusion

In our judgement, these are the main structural forces working in Canada to produce the crisis we are currently experiencing. By way of conclusion, let us consider briefly the position of the Parti Québécois from this perspective.

One may interpret the sovereignty-association option as the Parti Québécois' answer to the historic question of Canadian duality. At first glance, its central thrust is to transform and concentrate the linguistic, sociological, economic and cultural dimensions into a political and constitutional relationship—the relationship between Quebec and the rest of Canada.

However, what initially appears to be a response to the question of duality ends up by being a refusal to continue to ask and answer the question at all. The sovereignty of Quebec, if it came about as planned by the Parti Québécois, creates two unities, two states which probably would not feel themselves obliged to recognize fully the continuing presence of duality within their frontiers. As in all cases of this kind, there would be minorities on either side, English-speaking people in Quebec and francophones in the rest of Canada, but they would undoubtedly find it difficult to ensure that duality would continue to be a central dynamic of either state. The single exception would be the province of New Brunswick which will be required to cope with duality by virtue of sheer demography, whatever happens constitutionally to Canada.

In addition to passing ultimately beyond duality, sovereignty-association does something else: it challenges regionalism—or seems to. What *péquistes* have in mind, so far as one can tell, is some kind of one-to-one association between Quebec and the rest of Canada. That this is a possible objective seems to be assumed, rather than demonstrated. But what is the “other” to which Quebec would relate? It is not unified, but multiple and various; yet the logic of the sovereignty-association option presses hard on regionalism to deny itself for the sake of a duality which is little more than the Cheshire cat’s smile. This, on the face of it, does not strike most Canadians outside of Quebec, nor many inside Quebec, as a particularly seductive invitation. Better the freedom of action of genuine independence than a sovereignty that is not quite a sovereignty and an association whose ambiguous entanglements could impede movement for the sake of a number of obscure and uncertain advantages.

But what do those who espouse a united Canada have to offer by way of a better response? If it is little more than the opposite of sovereignty-association, that is to say, a regionalism which submerges duality, or a pan-Canadian nationalism that denies both, then it will not serve.







### A harmonious combination of parts

The societies that have grown up primarily within the framework of the provinces, and the French and English realities which have marked Canadian history for centuries, should not be considered as problem areas, simply to be managed and controlled. They are features of Canadian life to which we, and we think most of our countrymen, attach value. Canada would be impoverished by their absence, and Canadians would be diminished if they were denied the enriching experience derived from the often creative interplay between two linguistic and cultural orientations and among a diversity of regions and provinces. We do not want our children and grandchildren to be deprived of this heritage.

The goal of reform, then, is not to thwart or deny these realities which are an integral part of Canadian life, but to accommodate them more adequately, to accept and channel them within Canada as a whole so that all might prosper from their presence.

Balance is of critical importance in all free societies. It is doubly so in a federal and culturally plural state; balance between "province-building" and "nation-building," between the construction of a distinct society in Quebec and its membership and participation in Canada as a whole, between the will of the majority and the needs of the minority, between the claims of the indigenous peoples of Canada and the interests of other citizens.

But in terms of what criteria is the balance to be struck? The answer, in our opinion, must derive from some conception of justice and of a common good which is or ought to be the shared possession of all Canadians. We believe that this conception is as central to the resolution of the Confederation crisis as it is elusive and difficult to define. Indeed, the notion of a common good is a way of expressing the consensus that must support a free society.

One of the principal sources of the crisis is the erosion of the belief that the current arrangements of the country promote the common good. Consider some of the general grievances expressed by members of various groups. Many believe that the good of the whole is being promoted at the expense of their own welfare; they are called upon to make sacrifices for the sake of others and they receive little or nothing in return. They feel excluded from participating in the shaping of the common good, but they are expected to carry the burdens. They are left unsupported in their time of need, and consistently receive less than they consider to be their due.

Is this not the substance of which the unity debate is composed, whether the grievors are governments, language minorities, ethno-cultural groups or native people? The just balance for which we are searching is to be struck in terms of the common good. One can rank competing claims and ask people to exercise self-restraint by reference to the common good, so long as the good is in fact common, common to them as well as to others in the society.

We would suggest that a useful way of assessing the extent to which the common good has been achieved is to examine whether or not people are receiving their fair share, for it is in

sharing equitably with one another that we express a sense of justice and a common commitment to the welfare of the whole community.

Sharing, at least from the point of view of the Confederation crisis, takes two forms. First, there is the matter of how the power of the community is assigned and who exercises it. The extent to which power has been justly shared is an important factor in the current debate, not simply in the political and constitutional realm, but in economic and social life as well. The second form which sharing takes relates to the manner in which the benefits and burdens of Confederation are distributed. The equitable sharing of benefits and burdens among Canadians of all sorts and conditions is an issue which permeates our social life, but it assumes a particular importance in the debate on Confederation.

Our position, then, is this. Duality and regionalism lie at the heart of the Confederation crisis. We plan to employ them as yardsticks for examining some of our major institutions and practices, and for assessing and suggesting proposals for change. Where an existing practice or institution is being reviewed, or a new one being suggested, we will ask: To what extent and in what sense does it usefully advance the recognition of duality (or regionalism)? We believe that any general reform effort, however well intended, which fails to enhance duality or which offends the principle of regionalism is unlikely to increase harmony and unity in Canada. Our criterion to determine what constitutes enhanced recognition is the principle of sharing, more particularly power sharing and the equitable distribution of benefits.

### Some benefits of Canada

We have been speaking in the last few pages in rather abstract terms about the common good which justifies the association of free peoples in a federal country. Here we would like to be more specific in indicating what we have in mind, and speak plainly about some of the major benefits of Canada as a place to live and to raise one's children.

By international standards we are a people extravagantly blessed with the things necessary to a good life; in a global perspective, no one can deny that our problems, whether they are economic, constitutional or linguistic, pale almost to insignificance in comparison with the violence, cruelty, deprivation and weary despair that wrack so many other countries of the world.

Our country fronts on two oceans and a northern sea, giving us access to all the world and harbouring immense treasures beneath their surface. While some of the arid countries of the Middle East consider towing giant icebergs from the polar ice-cap to satisfy their thirst for fresh water, Canada has more of it than any other country in the world. Its forests seem almost inexhaustible, and oil and gas and minerals of all kinds lie in vast quantities beneath the soil and rock. The farmlands of the prairies produce grain so prolifically that we have problems storing it, while other nations starve for want of the necessities of life.

For its people, the land provides a vast terrain on which to work and play, and supports a wide variety of lifestyles and possibilities from which to choose: the millions of Canadians who have come from other lands in the twentieth century to make their homes here would

readily attest to that. We possess, then, a rich endowment of human, as well as natural resources, evoking in its variety the land itself. Despite the variety, however, there are certain minimum standards of education and health services, income and shelter which almost all Canadians enjoy, and which are increasingly being treated by the community as social rights or entitlements.

In addition, whether by good luck or good management, Canada has been a free and peaceful society, marked by a creditable though by no means perfect record in civil rights and by an infrequent resort to violence or civil conflict to express grievances and obtain redress. The manner in which the Parti Québécois is pursuing its goal of sovereignty-association is grounded solidly on these characteristics of Canadian society.

The combination of the physical domain of Canada and the accomplishments of twenty-three million people has produced a country which has been a significant international actor, especially since the second World War. Not a big power by international standards, its middle-rank position has kept it out of direct involvement in most of the conflicts that have preoccupied the world scene recently, but has left it with the reputation and resources necessary to play an often beneficial role in the re-establishment and maintenance of peace.

These, then, are a few of the benefits which we as Canadians enjoy and to which our children have access. Many of the citizens who spoke to us on our tour were clearly very conscious of these advantages. Indeed, lying beneath the grievances and the criticism expressed to us in our tour, we discerned among a great many Canadians an intense love of their country and a deep concern for its future. Often this feeling, if it was made explicit at all, was expressed with a certain shyness, as if patriotism was either a private or a problematic affair. This tendency has the unhappy effect of making patriotism a subterranean thing which is difficult to see, difficult to share and difficult to build on. But can one build a loyalty to the whole on the basis of a country's diversity? The Swiss have managed to root their commitment to diversity in their hearts and in the foundation and institutions of their country so that it has become their dominant shared value; in this area, Canada would do well to emulate Switzerland.

One reason for the magnetism of the Parti Québécois is the promise it offers of participation in a bold and exciting collective enterprise. Political life in Quebec has been given new purpose and significance in the last two decades by the sense of a people taking its destiny into its own hands. The pending referendum on sovereignty-association is the most recent and the most dramatic expression of this phenomenon. The symbolic importance and appeal of these factors should not be lost sight of; a citizen, in speaking to the Task Force, made the point succinctly when he said: "It takes a dream to fight a dream." For our part, we believe that the vision which supports the preservation and reorientation of this country is as positive as, and more compelling than, that which supports the Parti Québécois option.

We believe that there are three social objectives which Canadians might reflect on, and which might form the basis of much useful private initiative and public policy formation: to treat diversity as a national resource rather than as a social problem; to encourage greater sensitivity to the Canadian dimension of our lives; and to seek to understand as well as

possible the major forces operating on Canadian society and to develop public policies and institutions on the basis of that understanding.

### Three objectives for Canadians

#### 1. Diversity as a source of strength

The first, then, is to encourage by all means possible the positive understanding of diversity as a source of strength in Canada. At its most basic, this is a matter of self-interest, for it is very clear to us that the social and cultural diversity of Canada is stronger than its political institutions and will predominate, should there ever be a head-on clash.

That it is a great deal more than self-interest many people would agree. Nevertheless, we Canadians often say it with our lips, but do not feel it in our hearts, or live it in our daily existence. Instead of growing sympathy and understanding between French and English-speaking Canadians, for example, we seem often to be saddled on both sides with continuing ignorance coupled with uneasiness mounting occasionally to fear.

In considering diversity as a source of national strength, we would also wish to advance what might be called the "shelter theory." A large and diversified country can provide shelter for its members from the cold winds of economic change and political upheaval that sweep the international world; Canada possesses incomparably more strength on the international scene, diplomatically, economically and militarily, than would any of its constituent units standing alone.

Internally (and this is the other facet of the shelter theory), a large country like Canada is an association which makes it possible for the strong to support and assist the weak; and Canada has had ample evidence out of its historical experience to demonstrate that times change rapidly, and that those who are helping others today may be in need of help tomorrow. In the first half of the nineteenth century, the Maritime colonies were as prosperous as any in British North America: today the Maritime provinces depend heavily on the transfer of funds from other parts of the country through programs financed or directly administered by the central government. Though it now seems hard to believe, Alberta, just a couple of generations ago, was dirt poor; the memory of this fact, combined with a historic sense of grievance toward the "East" and a provincial economy which is largely dependent on oil and natural gas, helps to explain Alberta's ardent defence of provincial rights in the resource sector.

This brings us to an important point. The shelter theory only works domestically if the various communities in the country feel that by and large they have been given a fair shake. A long-standing sense of exploitation and neglect is barren soil in which to seed a commitment to the common good and to the principle of sharing one's good fortune. Canada has had its share of success and failure in the area, but one way in which we have been much less effective than we should have been is in explaining to ourselves and one another what membership in this country involves—what one has a duty to provide and a right to expect.



To rectify this situation will require action on many fronts. We need to explain more fully and clearly why we are doing many of the good things we are doing, such as our program of equalization payments. We need to ensure that our educational systems reveal the dynamism and variety of the Canadian experience to our children and awaken their curiosity about their fellow citizens who share this vast land. We need to insist that our communications network actually communicate, that it send messages back and forth among Canadians, rather than receive one-way transmissions from the United States. Our scientific and cultural agencies need to enhance our common appreciation of the distinctive things which are done by different people in different parts of Canada. We need to promote programs of travel and exchange within Canada so that individual Canadians can gain some experience of one another. And behind and beyond all this, we need to work systematically to rectify injustices and correct instances of unfair treatment wherever these are discovered.

These, then, are our thoughts on the first broad objective which Canadians might reflect on; namely, to strengthen the genuine appreciation of diversity as a source of Canada's strength and identity.

### **2. The enhancement of the Canadian dimension**

The second broad objective is to ensure the vitality of the "Canadian dimension;" that is, to ensure that there is both an effective government and a form of loyalty and respect for citizens to attach themselves to as Canadians. The Canadian dimension should serve to sum up and express the range of cultural affiliations and identities we each experience in our own way, and to reveal them as something to be shared among us all.

We can speak vigorously about the second objective because of what we have already said about the first. If Canadian unity is built upon an appreciation of diversity, then we have no hesitation in arguing for the enhanced recognition of the Canadian dimension; indeed, a feeling of security arising out of the respect—even affection—with which one's own identity is treated is more likely to increase than to diminish the loyalty one feels toward the association which extends that respect.

We need to strive to create a society which is as open as possible, which encourages and welcomes the contributions of its diverse communities, and which is imaginative in finding ways to permit common enterprises to go forward without eroding the distinctiveness and individuality of the contributions. Many native peoples, for example, argued before us that their cultural outlook and approach to life contain lessons from which others might benefit, and it is clear to us that the majority society has a long way to go in finding a way of learning from the native experience in Canada.

We also need to stimulate a consciousness on the part of the participating units in Canada that their local activities are likely to have a national aspect to them, and that some thought should be given to how their particular activities and aspirations fit into the whole and contribute to the country's general well-being.

In the course of our history we have successfully carried out some massive and impressive developments, either on a national or regional basis; such things, for example, as the

opening of the west and the building of the railways, the creation of a Canadian broadcasting network, and the giant hydro-electric projects of Quebec, Labrador and British Columbia bear witness to this fact.

But we need to find the knack of productive cooperation in many of those spheres and activities which are going to provide the challenge of the future. Some of our economic difficulties, we believe, may be attributed in part to our present incapacity to cooperate creatively among ourselves so that we can compete successfully with some of the other major trading nations of the world. This is an issue where one must expect governments and their agencies to show some leadership, but it extends far beyond them into our industrial and commercial sector, and raises questions about cooperation and conflict between firms, between workers and management, and between the various enterprises and functions that must necessarily contribute to a major economic project or international marketing venture.

### **3. The adaptation of political institutions**

Mention of governments brings us to our third and final broad objective; namely, to ensure that as Canadians we work to adapt our constitutional structures and public policies to Canadian society as it evolves, and not the reverse. Put as starkly as this, it seems to be a point of view that it is hard to disagree with, but we have discerned considerable evidence of the contrary practice and attitude. As our society and economy evolve, it seems to us that the task of the politician is to seek to understand the forces at work as clearly as he can and to assist in the continual adjustment of public institutions, and formulation of policies and practices that is a necessary consequence. This is going on all the time, of course, but a clearer acceptance of it as a natural and continuous process in the twentieth century would make life easier for us all.

The impact on Canada of the shifting patterns of international trade and economic power, the aging of our population, the westward shift of the centre of gravity of Canadian economic activity and enterprise, the growing strength of regionalism, the rapid emergence of a distinctive society in Quebec and its position in a predominantly English-speaking North America—these are all major developments which raise issues worthy of the boldest Canadian imagination.

Our proposals for a restructured federal system have been developed, not only to assist Canadians in coping with the country's present stresses, but also to put us all in a better position to come to terms with future pressures as they arise.

## **Our position**

In our September 1977 communiqué we asserted that we intended to support those who were "searching for the terms of a better Canada," and declared our commitment to the continuation of a Canadian federation, that is, "a system with the authority of the state shared by two orders of government, each sovereign and at the same time committed to cooperative association with the other, under a constitution." We further stated our belief



that such a system is the one best suited to our diversity and to the nature of our geographic, social and economic environments.

We felt able to make such a declaration because of our conviction that a federal system is much more supple and accommodating than many people believe, and because of our expectation that Canadians and their political leaders would in fact find the will to make the many changes necessary to meet the country's contemporary and future needs. As to the suppleness of a federal system, the accomplishments of the Government of Quebec since September 1977 attest to the wide latitude for action which exists even within our present arrangements; as to the will to reform, there are now some signs of a readiness on the part of Canada's citizens and a desire on the part of her political leaders to accelerate the long process of restructuring our common arrangements, a process which we hope to encourage with this report.

We have tried in this report to answer three questions: How do we secure the fuller expression of duality in all the spheres to which it relates? How do we accommodate more satisfactorily the forces of regionalism that are altering the face of Canadian society? How do we make the principle of sharing an "operational value" in our country, and within and between our governments, so that duality and regionalism and the other features of Canadian life are given appropriate recognition?

There are four general points we would like to make here before presenting our specific conclusions in subsequent chapters. First, we think that the approach to Canada's problems must be as varied and comprehensive as are the problems themselves. There is no single answer that will do the job. If we are to make Canada a better place for all its people, it will require action on many fronts: economic, social and cultural as well as political.

Secondly, we recognize and accept as a continuing, unavoidable feature of Canadian society that there will be marked variations in the strength, size, character and aspirations of the communities which together make up Canada. This will inevitably be reflected in wide variations among the provinces of Canada, despite their constitutional equality. This we accept as well; for example, the fact that the province of Prince Edward Island is smaller in population than the municipality of Mississauga, Ontario, does not mean that the former should cease to be a province or that the latter should become one. It does mean, however, that the federal arrangements that permit both Ontario and Prince Edward Island to flourish must be capacious.

Thirdly, we are concerned to ensure that, whatever system is worked out, the principle of flexibility and the provision for continual adjustment are preserved. We have noted already how rapidly the country's circumstances and prospects can alter, and how quickly the preferences and goals of parts of the population can develop; in the light of those factors, it would be folly to develop a political structure which imposed a straitjacket on future generations. It is highly desirable that we leave sufficient openness in the political system and constitutional structure to permit progressive adjustment as needs and circumstances change. We recognize that a willingness to preserve a flexible constitution depends in part on the security and confidence of the constituent units, and we will suggest a variety of ways of coping with this.

Fourthly, we will try to suggest ways in which Canada's eleven senior governments can increase the degree of cooperation and reduce the level of conflict that mark their contacts with one another. To effect improvement in the relations between governments, we believe that two important steps must be taken in the constitutional domain. The first is to clarify to a greater extent than is currently the case the roles of the two orders of government; some of the difficulty arises out of genuine confusion about who is to do what, and some out of the dubious exploitation by one government or another of the ambiguities which exist in the respective roles as they are presently defined. The other step that needs to be taken is to extend and secure the institutions within which intergovernmental cooperation can take place. We have some significant institutions of this kind now (for example, the federal-provincial conferences), and we think a good deal more can be done.

These are the four basic elements in our position that will shape our approach to specific issues. We will deal successively in each of the following three chapters with social, linguistic and cultural issues (Chapter 5), with our economic life and prospects (Chapter 6), and with the political and constitutional structures of Canadian federalism (Chapter 7).





## Introduction

The social fabric of Canada has changed greatly over the last century, and yet our social and political structures failed to accommodate many of these changing circumstances. In this chapter we shall look not only at the needs of this society in transition, but we shall also try to identify and sustain those qualities in Canadian life which have survived all the waves of change. It is a matter of addressing the balance between permanence and change.

A portrait of Canada in the mid-1860's would have shown our fundamental duality. It would have shown a landscape dotted by farms, small towns, and a few large cities, and a labour force engaged mainly in agriculture, trapping, fishing, mining and forestry. The portrait would also reveal at least one church in each of our settlements, but little physical evidence of the state. And, lastly, it might convey if only in outline some of the grandiose ideas and projects which were soon to come and which would have the effect of cementing together in a federal political system the people of Canada for more than a century.

Compare the Canada of today; the areas of change and those of permanence are clear. Our fundamental duality is present, although it takes a different form now. Language is still an element of duality, but ethnicity is less so. Quebec remains French in character and outlook, but through the physical extension of Canada's borders and the arrival of newcomers the country has become a homeland of people of many origins.

In Canada today, one person in three lives in a city whose population is a half million or larger. The land is still being farmed, of course, but by fewer hands. Manufacturing, the service sector, and the rise in white-collar work provide many times more jobs than the primary industries.

The intimacy of small-town or rural life is now unknown to most Canadians, and the sustaining power of the church is less of a force in our lives. The institutions of government have developed a momentum for growth which could not have been anticipated a century ago. And the original projects of the Confederation period, while still an important part of our common lives, have been overshadowed by the modernization of Canada and its development into an industrial society whose transportation and communications networks and trading links span the globe.

For the most part, the modernization of Canada has proceeded calmly and evenly by comparison with the experience of many other countries. However, the elements of the new social balance produced by the impersonal forces of modernization are not yet well enough understood and accommodated in our common institutions.

## Language

Language, for example, has always been a contentious issue in Canada. The story of the specific conflicts which this linguistic pluralism has caused is well-known, above all to

French-speaking Canadians. The Manitoba schools question and Regulation 17 in Ontario in the first half century of Confederation, and Bill 22, Bill 101, "Les Gens de l'Air", the policy of bilingualism and the Forest case in Manitoba, more recently, are all, if for different reasons, elements of a history whose harder lessons form part of the crisis of Canadian unity.

An approach to the fundamental issue of language in Canada must take account of the dynamics of social change and assess the extent to which the respective language policies of our central and provincial governments reflect the changing social environment.

People speak a language to communicate with those with whom they must deal in everyday life. In an earlier, more rural Canada the language most Canadians learned at home, be it French or English, was well enough suited to their adult lives. But today, the modernization of the country has created a network of social and economic relationships to which Canadians must adapt. It has meant "transferring" to a majority language; and in most parts of Canada, long dominated by Canadians of British origin, this has meant the English language.

In the case of francophone communities outside the so-called "bilingual belt", which extends from northeast New Brunswick, through Quebec, into adjacent parts of Ontario, and even for many within it, this trend has been very marked. Modernization has brought strong pressure for linguistic assimilation to English. Previously, French Canadians could work the land, market their produce, engage in other occupations in the primary sector, and maintain their language. Many still do. But, outside Quebec, the same francophones cannot today sell insurance in French only, or program computers in French only, or engage in a thousand other occupations which emerge only from the diffusion of high technology to industrial settings and the vast expansion of the service sector, or white-collar employment more generally. As the effects of these forces made themselves felt, francophone minorities became less able to maintain their distinct communities. Their churches, newspapers, schools, French-language professional services and family firms were subject to the same pressures as the individuals which sustained them.

The operation of the private sector has accentuated these trends. Commerce in the provinces of English-speaking Canada is a process conducted almost exclusively in the English language. As far as governments are concerned, the provision of essential services in English only by our federal and English-speaking provincial governments for most of this century has had the undeniable effect of discouraging the retention of minority languages, whether we have in mind French throughout nine provinces (with the recent exception of New Brunswick) or any third language. This unwillingness of public authority has provided a clear message to French-speaking Canadians and, more particularly, to the francophone Québécois.

### **Language in Quebec**

We have already pointed to the growing tendency toward the geographical concentration of Canada's French and English-speaking populations. Canada's French-speaking popula-



tion is increasingly to be found in Quebec—in 1951, 82 per cent of Canada's French mother tongue population lived in that province; by 1976, this proportion had risen to 85 per cent and demographers have estimated that by the census of 2001, approximately 95 per cent of Canada's francophones will be located in Quebec. Within the province itself, formerly English-speaking communities outside of the Montreal area are becoming French-speaking due to the migration or assimilation of anglophones. There is evidence that the use of English in Quebec as a whole may be declining: the proportion of adult males in the province who speak English only has declined from 16 per cent in 1931 to 9 per cent in 1971, whereas the proportion who speak French only has risen from 34 per cent in 1931 to 45 per cent in 1971.

The picture in Montreal is quite different. For decades Canada's liveliest major city, Montreal, has been the site of the head offices of many of our largest corporations. The vast majority of these companies have until recently operated in English only, and this has had a considerable impact on language use in the area. The English-speaking minority in Montreal continues to assimilate more speakers of other languages than does the French-speaking majority.

Immigration and migration from other provinces have reinforced the advantaged position of this minority in Quebec society. Approximately 100,000 postwar immigrants from the British Isles have settled in the greater Montreal area in the last thirty years. In addition, more immigrants to Quebec arrive with a knowledge of English than of French and, of those who arrive with a knowledge of neither French nor English, we estimate that 70 per cent assimilate to the anglophone and 30 per cent to the francophone community.

This is a cause of resentment to most francophone Québécois. Of course, the language issue in Quebec must be understood also against the backdrop of the attempts of Quebecers to assure themselves of a properly active role in the private sector of the Quebec economy.

### **Language policy issues**

There has been considerable change in language laws and policies in Canada over the past decade as both federal and provincial governments have sought to adjust their language arrangements to these changing circumstances. The federal government has, since 1966, endeavoured to provide the services available from the federal administration to all Canadians in the official language of their choice; it has also tried to give Canadians of either language group an equal opportunity of finding employment and pursuing careers in the federal administration while using their preferred official language in their work.

The federal government has also sought, through the use of financial incentives and other means, to persuade provincial governments to adopt statutory provisions which would have the effect of placing the English and French languages on an equal footing with regard to provincial government services.

Although the governments of many English-speaking provinces recently have become more responsive to the needs of their French-speaking minorities, they have been reluctant to provide a statutory framework for these changes.

These differences in orientation between the federal government and most of the English-speaking provinces have now extended to the province of Quebec. Under three successive governments, Quebec has adopted language legislation which has been increasingly assertive of the role of French in the life of that province. The most recent legislation of this kind, Bill 101, declares French to be the official language of the province and delimits those situations in which institutions and individuals must use, deliver services or receive services in the language of the provincial majority.

Canada, seen from the federal government's perspective, is a linguistically dual federal state composed of two societies—one French-speaking and one English-speaking—which extend geographically beyond the borders of any one province. Thus the federal government believes that it is necessary that this linguistic duality be more fully reflected in Canada's central political institutions and in federal policies and programs.

To the provincial governments, the picture is different. With one exception, each of them serves a provincial population whose vast majority shares one language. The exception, New Brunswick, has a substantial minority of speakers of French as a mother tongue which, in addition to constituting 34 per cent of that province's population, is concentrated in the north-eastern part of the province contiguous to Quebec. In Quebec, Canada's only province to have French as its sole official language, the minority of speakers of English as a mother tongue constitutes 13 per cent of the provincial population.

In every other Canadian province, the French mother tongue minority comprises less than 7 per cent of their respective populations. It is not surprising therefore that all Canadian provinces, with the single exception of New Brunswick, now have language policies in the form of statutes and practices which ensure the predominance of the language of the provincial majority in the provision of provincial government services.

These differences in perspective and in language policies between the federal and provincial levels of government, or among provincial governments themselves, need not be a major obstacle to Canadian unity.

It is the very essence of federalism that each order of government is sovereign within its own sphere of jurisdiction. For good and compelling social and political reasons, each of the eleven governments must be free to respond to its unique situation.

Just such an approach has been followed with considerable success by another federation, Switzerland. At the federal level, Swiss citizens have the right to be served in any of the three official languages of the country. Their provinces, called cantons, are free however to establish both the language or languages in which their services will be provided and the language and languages of work in the canton itself.

Whatever language arrangements are adopted in Canada must be compatible with the underlying social forces at work in our country while, at the same time, reflecting those principles on which our form of government is based. Language policy in a country like Canada is always, then, something of a compromise.

### **Language policy: the federal government**

The main lines of the federal government's language policy were set out in 1966—in the federal administration, employees were to be able to initiate oral or written communication intended for internal use in their preferred official language. Following recommendations to this effect by the Royal Commission on Bilingualism and Biculturalism, this policy was given a statutory basis with the passage by Parliament of the Official Languages Act in 1969. This Act declares English and French to be equal in status, rights, and privileges in all federal institutions.

From the evolution of the federal government's language policies and practices over the past thirteen years it is apparent that the remaining problems and tensions pertain more to the language of work within the federal government, and not so much to the language of service to members of the public. With regard to the language of work within federal institutions, the 1972 federal policy introduced special efforts to ensure that civil servants should be able to work in the official language of their choice in the National Capital Area, Montreal and other parts of Quebec, northeastern Ontario and northeastern New Brunswick.

In mid-1975, this was in turn replaced by the policy that public servants could work in English or French in the National Capital Region; outside the National Capital Region, the language of work of the federal administration would normally be French in Quebec, English and French in the north eastern regions of New Brunswick and some parts of Ontario, and English in the remaining parts of New Brunswick and Ontario and in the other seven provinces. Special consideration was to be given to the concerns of minority official language groups. In 1977, the federal government further refined its policy towards the language of work by indicating that greater emphasis would be placed on the use of unilingual positions in the provision of services to the public.

The federal government's support for bilingualism, even as it has evolved over the last thirteen years, has resulted in much greater access by the Canadian public in their preferred official language to the services provided by federal institutions. In this respect, much was accomplished in a relatively short period of time. Of equal importance is that the proportion of francophones working in the federal administration is now approximately equal to their proportion in the population for the first time in this century, for by 1977, 27.6 per cent of federal civil servants had French as their mother tongue.

On the negative side of the ledger must go the costly, and relatively ineffective, attempt to provide adequate second language skills to anglophone civil servants. Some civil servants did not receive the kind of language training suitable to their positions or did not attain the level of bilingualism required for the effective performance of their work in their second language. Many were not able to use the French they had learned when they returned from

language training, and have presumably failed to maintain the skills they acquired at so much cost. In addition, French-speaking civil servants are still considerably under-represented in executive positions, and in key scientific and technical categories, and over-represented in administrative support positions within the public service. Moreover, recent trends indicate that representation of French-speaking Québécois civil servants in key positions is low and declining further.

It is vital that the language policy of the central government command broad popular support. This support will be achieved in proportion to the efforts of the central government to ensure that the real issues of concern to people are being addressed. It is not only a matter of equal opportunity to secure employment in the federal administration, for example, but the ability, once hired, for both English and French-speaking Canadians to work in their own language. Too many francophones still do not enjoy this opportunity; though more than a quarter of federal public servants are francophones, a 1975 study revealed that only 12 per cent of civil servants reported that they worked in French and in 1977, only 12 per cent of positions in the federal administration were classified as "French essential".

Popular support for federal language policy will increase to the extent that future administrative measures to enhance it are, and are seen to be, fair and reasonable, yielding results appropriate to their costs. The federal government's efforts on behalf of our two official languages over the last few years place us now in a position to consolidate the resulting gains.

Since 1867, the BNA Act has guaranteed the equality of both languages in the Parliament of Canada and in the federal courts, but now the time has come to extend the constitutional recognition of language rights. Members of the public should have a constitutional right to obtain services in French or English from the head offices of every department, agency or Crown corporation of the Government of Canada and from all branches of the federal administration in the National Capital Region. Elsewhere in Canada, services should be provided in French and English in those circumstances where the demand is sufficient and it is feasible to do so.

The constitution should also guarantee the equality of both official languages as languages of work in the federal administration in the National Capital Region, in all federal courts, and in the head offices of every department, agency or Crown corporation of the Government of Canada. Elsewhere, the usual language or languages of work in federal institutions should be the language or languages of work normally used in the province in which the federal institution is operating. This, however, should not be allowed to impinge upon the right of an individual to receive services in English or French.

The right of every person to give evidence in the official language of his or her choice in any criminal matter should also be specified in the constitution. Entrenchment should extend as well to the right of every person to have access to radio and television services in both the French and English languages and the availability in both official languages of all printed material intended for general public use.



### Language policy: the provincial governments

It is at the provincial level that some of the most acute conflicts have occurred over language laws and regulations, conflicts which have polarized both Canada's major language communities and which have soured French-English relations for years at a time. The resentments aroused among French Canadians over the harsh restrictions on access to French language education in Ontario, Manitoba and other provinces in the late nineteenth and earlier twentieth centuries have had repercussions of much wider than provincial significance. In more recent years, Quebec's Bill 22 and Bill 101 have given rise to considerable apprehension not only among anglophones in Quebec but among anglophones throughout the country.

Much concern has been voiced about the policy implications of the demographic situation facing English-speaking Quebecers and francophones elsewhere. Our examination of demographic data confirm that this concern is well-grounded.

The rate of linguistic assimilation of French-speaking minorities is quite high, and appears to be accelerating in all English-speaking provinces other than New Brunswick. The French-speaking minorities, even more than Canadians generally, are becoming older and their school-age populations are in relatively sharp decline. Between 1961 and 1971, the number of children of French mother tongue four years of age and under dropped from 29,000 to 19,000 in New Brunswick, from 48,000 to 35,000 in Ontario and from 19,000 to 13,000 in the other English-speaking provinces. Due, among other things, to increasing urbanization (which brings with it greater contact with linguistic majorities), there is a relatively high rate of marriage to non-francophones. Among all the French-language minorities, except the Acadians of New Brunswick, this rate ranges between 30 per cent and 60 per cent and is accompanied by a shift to English as the language spoken at home in approximately 90 per cent of cases.

The awareness of these realities has not encouraged the governments of the English-speaking provinces with French-speaking minorities, except New Brunswick, to invest heavily in far-reaching programs of linguistic reform. On the other hand, these same realities have reinforced the determination of the French-speaking population of Quebec and of its provincial government to make even greater efforts to ensure the predominance of French in their province.

We support the efforts of the Quebec provincial government and of the people of Quebec to ensure the predominance of the French language and culture in that province. We believe that the people of Quebec must feel as confident and secure in the present and future potential of their language and culture as do the people of Ontario and the other English-speaking provinces. There can be nothing more damaging, in our view, to the cause of Canadian unity than the rejection of these aspirations of francophone Québécois by English-speaking Canadians. We believe that present constitutional arrangements which allow the provinces to adopt those laws and regulations which they deem suitable are appropriate to the present and emerging Canadian social context.



Under the terms of the BNA Act and the Manitoba Act of 1870, constitutionally entrenched linguistic rights bind only two provincial governments, Quebec and Manitoba. The specific provisions are chiefly of an institutional character, dealing with legislative and judicial language matters.

But things have changed considerably since 1867. New Brunswick adopted a law establishing English and French as official languages in 1969. Section 23 of the Manitoba Act of 1870 established a form of institutional bilingualism in that province, but it has not been in effect since 1890, when the province passed legislation to render it inoperative. But the 1890 legislation was recently held by a Manitoba court to be invalid, a decision which has since been appealed. Quebec, since 1867, has recognized linguistic rights for its anglophone community in many areas, and not only in those referred to in Section 133. Recently, however, some sections of Bill 101 were held invalid, because they violated the rights protected by Section 133. The question is still before the courts. At the provincial level, therefore, the situation leads to frustration and antagonism.

In our opinion, the protection of linguistic rights at the provincial level can be treated, at this time, in either one of two ways: extending the constitutional guarantees of Section 133 to every or to some provinces, or removing these guarantees, inviting the provinces to legislate safeguards for their minorities, taking into account the diversity of local situations, with the hope that a consensus between the provinces might form on a common denominator which eventually could be included within the constitution of the country.

After due consideration, we now think that the second option would be wiser and more likely to be successful in the long run, involve less confrontation, and be more in agreement with the spirit of the federal system.

This view might well stir up protest since it would deprive the English-speaking minority of Quebec and the French-speaking minority of Manitoba of the constitutional expression of certain rights. Let us observe first that in Manitoba, these constitutional safeguards have been ignored for more than three quarters of a century.

With regards to the English-speaking minority of Quebec, our purpose is certainly not to suggest that an injustice be committed. But we witness the fact that there has been an irreversible movement, especially over the last ten years, towards the development of an increasingly French Quebec. We believe that Quebec should not be prevented from developing its Frenchness by constitutional barriers which do not exist for other provinces and that consequently Section 133 of the BNA Act should be abrogated to the extent that it might be seen as conflicting with that aspiration.

We are confident, however, indeed we are convinced, that the removal of the constitutional obligations created by Section 133 will not undermine the will of French-speaking Quebecers and the government of Quebec to maintain the rights of the English-speaking community freely, openly and with generosity, by ordinary legislation of the province.

We also expect that the rights of the English-speaking minority in the areas of education and social services would continue to be respected. These rights, and this should be

stressed, are not now guaranteed by the Canadian constitution. Yet they are recognized under Bill 101, the charter of the French language, a law passed by a Parti Québécois government. Thus, we already have proof that the rights of the English-speaking community in Quebec can be protected, without any constitutional obligation, and that the governments of Quebec are quite capable of reconciling the interest of the majority with the concerns of the minority.

We also observe that progress has been made towards improving the situation of the minority in English-speaking Canada particularly in New Brunswick and in Ontario. The agreement on educational matters which the provincial premiers concluded in Montreal in 1978 provides us with a further example of progress. In that instance all provincial premiers committed themselves to do their best to provide education in both English and French in their primary or secondary schools. The right to use French in criminal courts in some regions of Ontario is another step forward. And one could go on describing advances being made on the road to reconciliation.

The facts appear to us to indicate that the French-speaking minorities will make more headway as a result of social consensus and provincial legislation than they would from constitutional guarantees at this time. It is this consensus which our recommendations seek to stimulate. They are aimed at all the provinces, the French-speaking one, the English-speaking ones and the bilingual one. They appeal to the intelligence and the fairness of their population. They do not brandish the club of the constitution.

As regards the provision of educational services to immigrants to Quebec, these should be provided in the French language even to those immigrants to Quebec who are English-speaking. Immigrants of all language backgrounds assimilate overwhelmingly to the majority language group in all English-speaking provinces, where very few immigrants seek access to French-language educational institutions. It would not serve the cause of Canadian unity if Quebec were to remain the only province in which the majority of school-age immigrants or children of immigrants continues to be absorbed into the educational institutions of the linguistic minority.

On the other hand, we firmly believe that children of all Canadian citizens who move to another province should continue to have access to educational services in the language, be it French or English, in which they would have obtained them in their former province of residence. It seems to us to be only just and fair that every French and English-speaking person have access to essential health and social services in his or her principal language, wherever numbers warrant; the same applies to the right of an accused person in criminal trials. To our mind, these are the basic rights which each province should accord its English or French-speaking minority. We recommend that these rights should be expressed in provincial statutes. When all provinces agree to a common set of linguistic guarantees, these rights should then be entrenched in the constitution and made part of our basic law.

### **Second-language training**

Governmental responsiveness and sensitivity to our two languages requires a group of fluently bilingual people to staff our major public institutions. Much the same can be said

for the private sector generally, and the large corporations whose size and scope involve them each day in both English-speaking and French-speaking Canada. Experience in other bilingual or multilingual federations confirms the importance of this. Canada thus has an enduring need for men and women who are fluently bilingual in French and English. To them will fall the opportunity to assume key positions in those institutions, in both the public and private sector, whose concerns are genuinely national in scope.

If the citizens of every province are to have equal opportunity to participate in these common institutions, each province must assure that the teaching of the second official language in their school systems is oriented toward the practical and functional requisites of communication with the other official language community.

Despite considerable improvements in the ways in which the second official language is taught in Canadian schools, most students who receive instruction in French or English as second languages all through their school years still do not attain functional fluency in the other official language. We suggest that the provinces review existing methods and procedures for the teaching and learning of French and English and make greater efforts to improve the quality and availability of instruction in these languages at all levels of education.

There is little doubt that federal financial incentives to support educational services to the English and French-speaking minorities and for the teaching of the second official language have stimulated a number of provinces to provide more extensive and better quality educational services. A lessening in federal support following upon the recent and positive statement by the provincial premiers may cloud the horizon in those provinces which are just beginning to introduce, expand or upgrade services to their francophone minorities, and may result in a more cautious pursuit of such objectives. In this light, it is clearly time for the provinces to make good their commitment on minority language education, alone, if necessary. Support for the cultural activities of the English and French-speaking minorities which are of a local or provincial nature should be provided by the provinces and by the minority communities themselves, rather than by the federal government.

It would seem more consonant with the spirit of Canadian federalism if federal aid to the cultural activities of the official language minorities were concentrated on those activities with an interregional, national or international focus. Over the past decade, for instance, the CBC and other federal cultural agencies such as the Canada Council and the National Film Board have made successful efforts to improve their services to the official language minorities. While acknowledging the progress made by the CBC in meeting the needs of the French-speaking minorities, representatives of francophone groups have pointed to the need for greater regionalization of these and many other French-language services. Much remains to be done in terms of the development of appropriate cultural services for the English and French-speaking minorities by institutions operating at the Canada-wide and interregional level, and it is at this level that responsibility lies clearly with the federal authority.



### Canadian ethnic pluralism

In the century since Confederation, the ethnic character of Canadian society has grown steadily more diverse. At the time of our first census in 1871, less than 10 per cent of Canadians came from backgrounds other than British or French. Today those of non-British or non-French origin represent more than a quarter of our population.

This change reflects the profound effect of immigration on Canadian society in the intervening years. The degree to which Canada's growing diversity has enriched and enlivened its cultural life has gained widening recognition, but discussion of Canadian pluralism has also suffered at times from a failure to relate it with sufficient care to other features of Canadian life. Occasionally it has seemed from the character of the discussion as if there might be a conflict between the historic duality of the country and its growing diversity. Yet there is in fact no necessary conflict between these two, since the growing reality of pluralism takes its place solidly within the framework of Canada's basic duality.

Confusion in this area is increased by a similar failure to clarify the relationship between pluralism and regionalism. The fact is that the impact of immigration on Canadian society has been an uneven one, in at least two senses: historically and geographically. Historically, the character of immigration has shifted over time in response to the changing needs of Canadian society and to evolving social conditions in the home countries from which immigrants have been sought. Thus, the immigration from central and eastern Europe which was characteristic of the period of western settlement in the early years of this century has now given way to immigration from South Asia, southern Europe and Latin America.

The impact of immigration has also been uneven in geographic terms. Some regions, cities and towns have felt the influence of immigration much more than others. The western provinces, for example, exhibit much greater ethnic diversity than Quebec or the Atlantic region, and Ontario is closer in this respect to the west than to the east. In fact, the original ethnic duality of the Atlantic provinces and Quebec still accounts for about 90 per cent of their populations. The major exception to this pattern east of the Ottawa River is the greater Montreal region, where Canadians of non-British and non-French origin now form about 20 per cent of the community.

Unfortunately the uneven distribution of diversity is frequently neglected in discussion of the cultural character of Canada as a whole. Cultural policy is often conceived as if Canada displayed a pattern and tradition of diversity which is common to the whole country. Yet the fact is that the members of the various ethnic groups have played a much more prominent role in the development of certain provinces and communities than of others, and in some their contribution has been a fundamental one. The regional or provincial framework is the one in which the various ethnic communities have been able to organize and express themselves most effectively and in which pluralism has become a living social reality.

It is for this reason that we believe Canadian pluralism should be closely linked, in thought and action, to Canadian regionalism. Cultural pluralism has achieved its greatest impor-

tance at the provincial level and it is there that it should be most fully reflected and nurtured. We recommend therefore that the provincial governments should assume primary responsibility for the support of multiculturalism in Canada, including the funding of ethno-cultural organizations. We also recommend that the major ethno-cultural organizations in Canada attempt to work more closely with provincial governments to develop ways in which multiculturalism can find most effective expression through provincial initiatives.

However, it would be wrong to think that consideration of Canadian pluralism can or should be limited to its cultural dimension. There are many other important social issues which deserve attention from Canadians at large, public authorities, and all those responsible for the welfare of the ethnic communities. Fundamental issues such as equality of opportunity, the sharing of Canada's material benefits, access to public services, and the degree of racial and ethnic discrimination to be found in our country are of at least equal importance to the cultural issues so often discussed. If we are to maintain or strengthen the unity of a country like ours, whose people are drawn from so many backgrounds, we must not allow preoccupation with the cultural side of diversity to distract our attention from these basic social issues. In line with our objective of treating diversity as a source of strength, and responding to the concerns proposed by many ethno-cultural groups we met, we have proposed that both the public and private sectors make efforts to reflect in their institutions more adequately the cultural diversity of Canada. The future we hope to share together must include all Canadians, and provide equality of opportunity for all.

### First Canadians

We are well aware of the complexity of the issues in native policy. We must first recall that native people *as a people* have enjoyed a special legal status from the time of Confederation, and, indeed, since well before Confederation. Section 91 (24) of the BNA Act gives to the Parliament of Canada exclusive responsibility to legislate on the subject of "Indians and lands reserved for Indians". This has been held to include Inuit or Eskimo peoples. The exclusive federal authority over all matters that touch "Indianness", as the present chief justice of Canada has put it, is unique in giving to the Parliament of Canada legislative jurisdiction in relation to a specified group of people. For administrative and policy purposes, just who is and who is not an "Indian" is set out in the Indian Act.

We believe that the pressing issues facing native people in Canada raise broad philosophical questions which every country with an indigenous minority must sooner or later address. Is the historic and valued attachment to the land which most native people share to be made the cornerstone of a new relationship between native people and other members of Canadian society? Are the disheartening conditions under which native people live in many rural areas, and, increasingly, in our towns and cities, to be made the focus of a new national commitment to their welfare? Can Canada find the strength to turn the dilemma of existence for many native people into new and special opportunities for all of them? Should the native people themselves be given the opportunity to shape and define collectively their preferred relationship with the wider society?



Questions such as these go to the heart of the matter. They will only be answered in the way the country's relationship with its first Canadians evolves in the next decade. But they must be answered soon. Here we present four broad policy options to assist reflection on the subject: phasing out special status, a modified federal role, native sovereignty, and "citizens plus".

### **Phasing out special status**

One broad option before us is to phase out in an orderly manner both the special constitutional position of the native people, and the unique relationship native people have with the federal government. Proponents of this option see Section 91 (24) of the BNA Act as a two-edged sword. While it certainly gives native people, or most of them, a special status as a people, it has led to the perpetuation of an unhealthy dependence on the central government generally and the Department of Indian and Northern Affairs in particular. Proponents of this option believe that this dependence is best ended by phasing out special programs of assistance to native people, and the rapid settlement of all sound legal claims to land. Land claims settlement might be followed by the transfer of titles to natives as individuals who would then be on their own in Canadian society.

Ending special status is favoured by those who believe that the "separate but equal" position of native people has led to a form of neglect of their general welfare, much as it has in other societies which have employed such an approach to distinctive minorities. Phasing out special status was an important element in the central government's ill-fated white paper on Indian Policy in 1969. The status Indians and all other native people reacted so strongly against this paper that it was soon withdrawn. In objecting to this policy, the native people themselves were rejecting an American approach to Indians which has been in existence for much of this century. In contrast, Canadian policy has traditionally accepted both the special status of native people, and their permanent attachment to the land.

### **A modified federal role**

A second option would preserve both special constitutional status and the attachment to the land. It would also maintain and clarify the role of the central government in the broad field of native affairs. Proponents of this view call upon the central government to exercise its traditional responsibility in a new way, one which maximizes the opportunities for native people to choose freely from two alternatives: to remain on the land, or to move into the mainstream of Canadian society. For a start, this option would entail the consolidation of all programs of assistance to native people into one central government department, at whose highest levels native people themselves would be well represented. Specific federal programs would be required to promote the economic development of reserves, to stimulate the construction of new and adequate housing, to guarantee the provision of essential social welfare, education, and health services.

But these services would also be available from the same central government agency to native people living in our towns and cities, thus equalizing the attractiveness of urban life

for the many native people who choose it. This option, accordingly, would maximize the freedom of action of native people as individuals to choose a life in their traditional communities based on the land, or to enter the wider society with a greater confidence provided by the support put at their disposal.

### **Native sovereignty**

This option favours a more radical approach to these issues based on the view that as the original proprietors of Canada, they are entitled to a share of Canada sufficient to their current and future needs. That is, proponents of native sovereignty take the view that they themselves, in autonomous and sovereign institutions of their own creation, must secure native socio-economic well-being and cultural development. To do so, many argue, requires placing a certain distance between themselves and the wider society.

Although formulations vary, native sovereignty usually entails the exercise of the principle of self-determination through the creation of autonomous institutions within the Canadian federal system. The native communities possessing these institutions would receive a land and resource base adequate to provide a decent standard of life. The citizens of these new jurisdictions would be subject to laws and regulations of their own making, and, in some versions, would not be subject to central, provincial or municipal laws and regulations on their land.

Such an approach may seem to be at variance with Canadian traditions and history. But those native people who uphold the option of sovereignty see it as a way of providing their communities with a set of conditions which approximate the circumstances they enjoyed before the arrival of the first Europeans.

### **“Citizens plus”**

This option combines elements of the others by stressing both the uniqueness of native people and their inevitable ties with Canadian society. Under this option, every native person would be eligible to benefit from all federal, provincial, and municipal policies, programs, and services provided for Canadians generally, with one additional category.

This additional category would be composed of all those forms of assistance directed to native people alone, thus adding the “plus” factor to the option. Proponents of this type of approach underscore the continuing debt, which all of us owe to the first Canadians, by expressing this obligation as a permanent feature of Canadian life. Thus, while specific programs of assistance to native people may change with changing circumstances, the spirit of Canada’s special commitment to the native people would not. Their well-being would form a fixed priority of the highest importance to Canadians now and in the future.

In setting out these four broad options, the Task Force is aware of the complexity of the issues facing native people and our governments. Our intention is not to suggest one or another of these routes as the best one to take. Indeed, we doubt, whether there can be a single answer for all native peoples, or whether there is only one “native question”.

For these reasons, the proposals we make are consciously limited by our recognition of the complexity of the issues and our realization that they are in the process of development. We have chosen five recommendations which, for the most part can be implemented fairly directly by the central government, or by the central and provincial governments acting together. Our recommendations should, however, be implemented in close cooperation with appropriate representatives of Canada's native people.

First, we believe the time has come for the federal government to act quickly and decisively to ensure full legal equality of men and women under the terms of the Indian Act. We recommend that sections 11 and 12 of the Indian Act be amended in order that Indian men and women acquire and lose Indian status in exactly the same way.

Two additional proposals speak more to the attitude underlying the policies of the central government toward native people than to the strict legalities of the Indian Act. First, we believe that the central government should make greater efforts to promote and protect native languages and cultures. Secondly, as an analogous measure, the central government should more actively facilitate communications between Canada's native people and the indigenous people of other countries. Both as the home of native people, and as a respected member of the international community, Canada can show leadership in a field of international affairs at once new and of historic significance.

Our next two proposals are addressed equally to the federal and provincial governments, and refer directly to the place of native people in the Canada of the future. First, as both orders of government are currently involved in serious consideration of constitutional reform, we believe that it is now appropriate that specific attention be paid to the issue of the constitutional position of the first Canadians. More specifically, both provincial and federal authorities should pursue direct discussions with representatives of Canada's Indians, Inuit, and Métis, with a view to arriving at mutually acceptable constitutional provisions that would secure the rightful place of native people in Canadian society.

Secondly, we recommend that the central and provincial governments meet to settle their respective areas of constitutional responsibility in the provision of essential services in the fields of health, social welfare, housing and education to status and non-status Indians, to Inuit, and to Métis on reserves, Crown land, rural centres and large cities.

Finally, in order to increase the sensitivity and responsiveness to native people of Canadian society in general, we suggest to the central and provincial governments, and to the private sector that increased funding be made available to native people and their organizations to enable them to undertake historical research and to publish histories of their tribes and communities. Governments generally and major private sector corporations should make greater efforts to see that native people are adequately represented on boards and commissions, task forces and study groups which are active in fields of special relevance to the first Canadians.

## Cultural policy

The definition of the respective roles of the federal and provincial governments in the field of "culture" is influenced by the meaning attributed to the word itself. In its narrowest sense, culture may refer to what many would call the "high culture," on display in the theatres, museums, concert halls and art galleries. However, in its broadest meaning, culture includes the complete fabric, values and life of a community. If this is what is meant by culture, it seems clear that the provinces have, and ought to have, a large role to play in the formation of cultural policy. They already have at their disposal many of the tools by which cultural development in the fullest sense may be achieved and they are uniquely situated to support activities that influence the culture of everyday life.

While the broader definition of culture would obviously include much that is within the fields of responsibility attributed to the federal government, many of these have less direct impact on the everyday life of Canadians. With the exception of the activities of the CBC/Radio Canada, even federal cultural policies are concerned for the most part with culture in its more restricted sense and are therefore of less immediate significance to the majority of Canadians in their daily lives.

Clearly both orders of government have important responsibilities in the cultural field but, in the view of the Task Force, their future roles should emphasize priorities appropriate to the general character and function of each order, and they should avoid undertaking new functions which could be performed better by the other one.

The central government has for many years been the prime mover in Canadian cultural and artistic life. If it has not always displayed a sense of carrying out a coherent cultural mission, the central government has nevertheless played an invaluable pioneering role in many crucial fields which might otherwise have been neglected. It is the only government in Canada which has the resources and the breadth of perspective to develop cultural programs directed at the country as a whole. At the same time, however, the central government's experience, resources and priorities may encourage it to expand in future into fields which are better left to the provinces. We would suggest that the central government should concentrate its efforts on developing programs which are of a Canada-wide dimension and should avoid extending its future operations into domains and pursuits which the provinces can and should perform for themselves.

Three examples should serve to illustrate the kind of cultural policies which would now be appropriate for the central government. It should use its cultural agencies to encourage individuals throughout Canada to develop their talents. This could be done by increasing the number of Canada-wide artistic prizes, competitions and cultural activities for the young people of the country. The splendid example provided by the National Youth Orchestra deserves to be recognized and celebrated by the extension of the model it provides.

The central government should encourage such "travel and exchange programs" as the Second Language Monitor Program and Katimavik. These programs permit the traveller to



to get beyond the geography of this country, in order to experience its cultural richness and the human sources of its duality and regionalism. The public and private sectors should cooperate to increase the number of youth exchange programs and efforts should be made to extend them to adults. In addition, the central government should, in cooperation with the private sector, do its utmost to increase opportunities for lower-cost travel in Canada, in order to enable Canadians so wishing to become better acquainted with their country and their fellow citizens.

Finally, the central government through such tools as the tax system can play an important role in assisting our cultural industries which find themselves in difficult and uncertain straits. The federal and provincial governments should coordinate a strategy to promote the products of our varied cultural activities. Books, recordings, magazines, paintings and films can be more imaginatively and effectively distributed and marketed throughout Canada. The central government should take the lead in developing such a strategy.

These examples suggest the priorities which should guide the future activity of the federal government in cultural field, both in the areas where it is already active and in any new endeavours.

However, we cannot forget that culture, in another sense, is the premise for the existence of any society. Therefore, the key element of any cultural policy for Canada must be the full recognition of the cultural distinctiveness of Quebec, and the essential role of the provincial government in protecting and nourishing it. This distinctiveness should be recognized formally in the preamble of the constitution. The text of the constitution should ensure that the government of Quebec has the powers it requires to protect and develop its French heritage. Although the Task Force is of the opinion that the importance of this cultural domain in most provinces of English-speaking Canada is not yet as vital as it is to Quebec, a constitution should make provision for the future.

If the urgency of the situation in Quebec requires immediate attention, the evolution of Canadian regionalism may very well reach the point at which the provincial governments of English Canada are looked to for leadership in the field of culture in the way the provincial government of Quebec is now. Thus in Chapter 7 we suggest that all the provinces be given additional powers to undertake new programs in the broad domain of culture.

Whether or not they wish to avail themselves of these powers immediately, the provinces should take the primary role in supporting local and regional cultural and artistic development, particularly by encouraging wide public participation in cultural activities and by the establishment, where they do not as yet exist, of provincial arts councils to assist in this process.

We stress this matter of participation for a good reason. Canadians in recent years have become more active in cultural pursuits, and less willing to be satisfied with a passive or spectator role. We feel that the provinces should build on this trend by working closely with their individual citizens, ethno-cultural groups, municipalities and community groups to promote the ideal of direct public participation in regional and provincial cultural development.



Since most provincial programs are by their nature closely entwined with cultural development in its widest sense we urge the provincial governments to be conscious of the impact these "non-cultural" programs may have on the cultural development of their society.

They should also recognize the importance of education, not only for their provincial societies, but for the development of young citizens of the federation as a whole. Accordingly, the provinces should emphasize that education has a Canada-wide dimension by giving greater prominence to Canadian studies, and they should, through a strengthened Council of Ministers of Education, develop ways and means by which this dimension may be represented in our school systems.

Thus the provinces, and in particular Quebec, have an essential responsibility for culture in its most basic sense. The central government, while not ignoring its appropriate role, must be prepared to recognize this fact and should orient its own future activity to cultural endeavours and institutions which affect the federation as a whole.

### Conclusion

These, then, are the thoughts we wish to share with our fellow citizens on the subject of language, culture and social policy. Duality and regionalism provide the context within which we have approached these issues; but, more generally, we have attempted to build our thinking upon an appreciation of some of the major forces of modernization and change that are transforming Canada and its people, as they are the countries and peoples of most of the rest of the world. By adjusting Canada's policies and institutions to the needs of Canadian society as it develops, the citizens of this country can preserve a social equilibrium in the midst of rapid change.





As members of the Task Force, we have had many opportunities during our cross-Canada tour to observe the connection a large number of Canadians make between the unity crisis and the present state of the economy.

For some of the participants at our hearings the greatest threat to Canadian unity was inflation, high unemployment, regional disparities in income and employment opportunities, or foreign control over large sectors of our economy and the regional frustrations and alienations they all foster.

Other participants, in particular business and labour leaders, pointed out the costly effects of political uncertainties on industrial development and on the climate of investment. The functioning of Canada as an economic union was questioned as well. Planning, they said, is not easy in an environment where there is constant haggling about which level of government is supposed to do what, where policies overlap and programs are duplicated, and where there are growing restrictions in interprovincial trade. Intergovernmental conflicts over taxation, marketing boards and provincial purchasing policies were raised as major subjects of concern.

We take these views as additional evidence to support our conviction that Canada's crisis has economic, social, political and psychological dimensions—all intimately related.

### **Perspective on the past**

The link between the health of the economy and efforts to sustain unity is a theme that recurs in Canada's history. Even though Canada has progressed and developed enormously over time, she has encountered periods which have put her political and economic structures in doubt. In the colonial 1840s, after the loss of preferential treatment in the British market, there was a movement in support of annexation by the United States. In the 1860s, the loss of reciprocity with the United States helped to forge the four colonies into an economic union which could withstand the pressures of annexation. In the depressed 1870s, the National Policy was designed to protect Canadian industries with tariffs. In 1886, Nova Scotia vented its economic dissatisfaction with Confederation through the election of a government which advocated secession. In the 1930s, the Depression called the whole economic and financial structure of Confederation into question and led to a new and enhanced role for central government direction in the management of the economy. The Second World War greatly increased this predominance, and to a large extent this situation remains with us today.

Given the forces of dualism and regionalism in Canada, it is not surprising that provincial governments, Quebec being the most vocal of them, have reacted to this concentration of fiscal resources—and the power that goes with it—in the hands of the central government. The pendulum has been moving in their direction in recent years, but this, too, has added to intergovernmental tensions.

### **Current economic realities**

Throughout our history a most obvious characteristic of the Canadian economy has been the high degree of dependence upon international trade. In a nutshell, Canada's prosperity is based on the export of raw and semi-processed commodities, the proceeds of which are then used to acquire equipment, material and finished products. Since her natural resources are usually costly to exploit, their exploration and development require massive doses of capital imported from abroad. Prevailing international circumstances in the postwar period favoured such trade until recently. As a result, Canada has enjoyed sustained economic growth for the better part of the last three decades. World trade began to slacken around 1972-74 and Canada found herself immersed in a world recession. Most advanced industrialized countries still continue to struggle with slack economic performance, poor investment climates, increased rate of inflation and high unemployment.

Moreover, Canada must contend with this international situation at a time when a greater proportion of women and larger numbers of young Canadians, who were born during the postwar baby boom, are joining the work force. The growth in the numbers of those seeking work has outstripped the ability of the economy to produce jobs. The result is that Canada's youth in general and regions of slow growth in particular face unacceptably high levels of unemployment.

While it may not be of great comfort to the unemployed, it seems to us that these very real difficulties must be put into a broader perspective. The performance of the Canadian economy, although sluggish, compares favourably with those of most of our trading partners. For example, in the last five years there has been a substantial reduction in the historic gap between Canada and the United States in terms of income and production per capita, even taking into account depreciation in the value of the Canadian dollar. Despite current rates of unemployment, the Canadian record in creating jobs has been impressive by most international standards, and by the same standards Canada has managed to contain the rate of inflation within reasonable limits. Even more important are the positive prospects for our economy in the future. These will result from recent improvements in terms of trade for natural resources and unprocessed commodities, and from the possibility of restoring Canada's self-reliance in energy by achieving a balance between imports and exports. Also significant will be the expansion of our resource base through the exploitation and management of the continental shelf.

### **The challenges of the future**

Nevertheless, there is considerable evidence that an improvement in the country's economic performance will require major and, in some instances, difficult adjustments in Canada's economic structure. In traditionally strong export markets for forestry products, minerals and other raw materials, Canada faces severe competition, primarily from the emerging states of the Third World. Some of her established domestic industries, such as textiles, clothing, footwear and the assembly of colour tv sets and other electronic products, are increasingly unable to compete with lower-priced imports. Canada along with other industrialized states must also contend with a limited supply of resources, particularly non-renewable energy resources, and also with the results of the abuse of such resources as the land and the natural environment.



Most important, the challenge of restructuring and managing Canada's economy has to be met while recognizing the realities of modern Quebec and the aspirations of Canada's regional communities. Indeed, it seems to us that reform of the constitution and political institutions would be justified even if our sole purpose was to improve the ability of the Canadian public and private sectors to address themselves to the economic policy requirements of the future.

### **The nature of economic integration**

It is generally recognized that substantial economic gains come from integrating into larger and more complete types of economic association. Integration allows regions to take advantage of a venerable principle of economics: the division of labour and the specialization of production which goes with it. By operating within an integrated whole, regions can specialize in the production of goods and services in which they have a comparative advantage. At the same time, the possibility of interregional trade permits greater volumes of production, and hence lower costs. The size of the market in which the enterprises of a province, a region or a state can trade determines the limits of specialization.

Obviously there are limits to the benefits a region can gain from specialization and from the integration of its economy into multi-regional units. Otherwise regions would not resist the attraction of integration; there will be disadvantages or sacrifices, the majority of which may be of a non-economic nature.

To see where Canada fits and to appreciate more fully the economic advantages and disadvantages of economic unions, seven forms of integration found around the world may be considered. They are classified in ascending order of integration.

The first, the free trade area, consists simply of a reciprocal elimination of tariffs between members, each being free to levy its own tariffs against non-members. Experience has shown that this type of association generally does not last long. Free trade areas have usually either been dismantled or have evolved toward more complete forms of integration.

The second, the customs union, allows free trade among members but sets up common tariff policies against non-members. Like the free trade area, customs unions have not proven very enduring.

The third, the common market, goes further by removing restrictions on the movement of goods, services, capital and labour among members. The best, although not a pure, example is the European Economic Community. The EEC satisfies the criteria of a customs union, but it appears to be less than a full-fledged common market because labour and capital are not perfectly mobile. At the same time, the EEC has some of the attributes of an economic union and, to a certain extent, presents some aspects of a confederation or even a federation, its proclaimed goal.

The fourth, the economic union, involves, in addition to a common market, varying degrees of harmonization of state economic policies in order to remove discrimination arising from disparities in these policies. Examples of possible areas of harmonization are taxation, agriculture, transportation, social security and regional development. In economic unions

common agencies are usually created to administer common policies on behalf of the member states.

The fifth, the combined monetary and economic union, adds to the economic union the elements of a common currency. The union between Belgium and Luxembourg, which provides us with one of the few concrete examples of this type of union, unfortunately casts little light on its possibilities. The small size of Luxembourg causes it to be largely dominated in economic and financial policy by Belgium. In any case, such an arrangement would pose certain theoretical and practical difficulties for a country such as Canada, due to the fact that it entails, almost by definition, a single capital market. It is difficult to conceive of how such a market could resist becoming balkanized without the degree of fiscal coordination that could only be achieved in a federation.

The sixth is the federation. It is a substantially more complete form of integration because it adds to the customs, economic and monetary union the dimension of a political association with a common government responsible for matters of federation-wide concern.

The seventh and most complete form of integration is found in unitary states, such as Britain, France and Japan, where the regions are fully integrated under a single political authority.

Thus Canada, as a federation, ranks high in the scale of economic integration. She is at one and the same time a free trade area, a customs union, a common market, a monetary and economic union, and her structure is capped by a measure of political integration.

### **Economic adjustment and the federation**

An important consideration with respect to a federal union has to do with what is called the process of economic adjustment. The comparative advantages on which regional specialization is based do change over time, as old resources are depleted and new ones are discovered; as changes occur in technology or the cost of transportation; as people acquire new skills or develop new tastes. In other words regional economies are not static, but constantly change relative to one another, and economic adjustment is a continuous process. There are many reasons to believe that Canada is at present in a critical phase in this regard, with some regions or provinces going through favourable mutations (Alberta at the present time, for example), as others continue to struggle with persistent economic problems.

In terms of economic adjustment, a federation represents a significant advantage, particularly at the present time, from the point of view of the regions or provinces such as Quebec and the Atlantic provinces; it affords them the opportunity to benefit from interregional transfers of public funds raised by the central government. If these funds are properly directed at restructuring and reorienting their economies, the adjustment process will be substantially easier than if the regions or provinces had to rely solely on the resources at their disposal. This point is equally valid for every region in the federation, since areas that are favoured at a particular moment may well require adjustment assistance at some point in the future. On the other hand, Alberta and Saskatchewan are examples of provinces

which went through economic difficulties in the past but now are among the strongest provinces economically.

### **Gains and sacrifices from economic integration**

Our analysis indicates that greater economic benefits should result from increasing levels of integration. Some of these benefits are associated specifically with the integration of regional economic activities into a larger market. For example, larger markets provide a greater scope for the diversification of sectors and specialization, resulting in a better allocation of the factors of production. Competition is enhanced; industries can take advantage of economies of scale; and a larger and more efficient financial sector may be created. Moreover, the availability of a more diversified and broader natural resource base is an important benefit—when the market for one commodity is low it may be counterbalanced by the more favourable position of other commodities.

Other benefits related to size come into play, particularly when integration takes the form of federal union. We have in mind a variety of aspects related to the efficiency and effectiveness of the larger public sector, such as the economies of scale in the delivery of public goods (for example in national defence), and a greater scope for interregional policy coordination which would take into account programs whose impact could not be restricted to a single region. Also significant is the enhanced capacity of the public sector to raise funds through external borrowings.

In a federal union, the regions can expect their economies to perform better as a result of the free movement of labour, capital goods and services. Other advantages are the greater chance of restraining undue competition among the regions for development projects and the improved leverage of the regions in securing international trade advantages. Finally, as we have noted, a federation allows for interregional transfers of funds through income support measures and adjustment assistance to the regions.

While such benefits may be difficult to measure precisely, they are nevertheless very real, and they are reflected in the standard of living Canadians have long enjoyed. In a nutshell, integration creates a surplus, because the whole is greater than its parts. And the surplus, using the central government as an instrument, can be redistributed so that the strong parts help the weak to the benefit of the whole.

At the same time we must recognize that increased economic integration also entails greater sacrifices, or costs, particularly for regions that are sufficiently developed and internally cohesive to be able to consider the possibility of alternatives to a particular form of integration. This may be assumed to be the case for a number of Canadian provinces, among them Quebec.

The cost entailed by integration may be described as essentially social and political. Even when an association has not passed beyond the stage of a customs union, the ability of component units to influence corporate decisions is limited, as is their access to cheaper imports which do not compete directly with regional production, and their ability to promote local employment by means of tariff barriers. Furthermore, any higher degree of economic integration imposes additional constraints on the autonomy of the regional unit.



It becomes less able to manage its own economy since it is no longer allowed to restrict the movement of its people, capital or goods, and it must bear the social costs of this increased labour mobility. Moreover, the priorities of the regional unit may be distorted by the existence of common policies which do not sufficiently take into account the distinct regional circumstances.

One example of the political constraints imposed on provincial and state governments by the higher degree of integration which is required in a federation is the constitutional provision which normally confers upon a central government exclusive power over inter-provincial and international trade. In Canada, for example, natural resources, which are owned by the provinces, come under central government control when they are traded outside a province. Finally, there are political costs associated with the distance of the central government from regional problems. It has been argued that it is more difficult to signal regional grievances to a remote central government than it would be to the closer regional or provincial government.

For Quebec, all this is swollen by its own particular problem—by English-speaking predominance in its business sector, by its concern for a distinct heritage, and by the social and cultural cost any French-speaking person may have to pay on moving, for economic betterment, to English-speaking areas.

Taking both benefits and costs into account, equilibrium is reached in practice when the advantages in favour of a higher level of integration are counter-balanced by the social and political costs which each region is prepared to tolerate. In the case of Canada the limits to integration are imposed by those Canadian realities which we have previously described as the principles of dualism and regionalism.

### **Enlarging the surplus from economic union**

One of the main conclusions to be drawn from this perspective on economic integration is that the well-being of all Canadians is critically dependent upon their capacity to maximize the benefits of integration and to increase the surplus it creates. At the same time account must be taken of the fact that most of the economic benefits from integration can entail regional sacrifices and that these must be kept at a reasonable and acceptable level in relation to benefits.

We turn now to ways in which the economic benefits of federal union may be increased relative to the costs.

### **Removing interregional barriers**

Although the Fathers of Confederation intended to secure the complete free movement of goods within Canada, judicial interpretation of the BNA Act, in particular sections 91(2) and 121, has made possible a variety of non-tariff barriers.

As a result, most provincial governments have developed a multitude of regulatory measures, have evolved practices such as preferential purchasing policies, quotas, and preferential pricing, and have established marketing boards, all of which have reduced

interprovincial trade and therefore the efficiency of Canada's common market. In addition, the constitution does not prohibit restraints on the international and interprovincial exchange of professional and commercial services such as legal and engineering consulting and computer data processing. Because these provincial barriers contradict the spirit of economic union and should be prevented as far as possible, we are proposing that section 121 of the BNA Act be clarified and strengthened, and that it be extended to cover services.

Similarly, we think preferential provincial purchasing policies should be permitted only in those cases where the province requires them to alleviate acute economic hardship. We further suggest that the justification for such practices and the time they are expected to last should be specified and should be agreed to by other provinces.

Provincial legislation regulating the professions and trades has created barriers to mobility. It has had this effect even though the essential purpose of establishing standards for qualification and training is to protect the public. The lack of uniformity in standards from province to province should be corrected and country-wide mobility encouraged as far as possible, even if it means that common standards would have to be reviewed periodically through a process of consultation between provincial governments and organizations representing the people involved.

In the same way, we are aware that provincial legislation can impede the movement of capital, especially with regard to corporate mergers and the purchase of land. We think the constitution should expressly forbid such barriers.

### **Tax coordination**

Wide provincial taxing power is essential to the high degree of fiscal decentralization that now characterizes Canadian federalism. Overlapping taxing powers, however, can pose serious problems within our common market, and the problems can only be resolved by effective intergovernmental coordination both among the provinces and between the central and provincial government. It is very important that the provinces coordinate their tax policies in order to prevent fiscal competition that would seriously distort the preferences of businesses and individuals with respect to location. Here again, exceptions should be agreed upon only when specified social and economic objectives would be served.

### **Economic stabilization**

Broadly, the recognition of duality and regionalism should go hand in hand with acceptance of the vital role of the central government in economic and financial matters. In an age that encourages and even forces interdependence and confronts Canada with growing world competition, we believe the answer lies in better coordination between the two orders of government. We think this calls for a greater degree of mutual respect and in particular for a more willing acceptance by Ottawa of the maturity of the provincial governments. On the one hand, in their own interests, the provinces need a central government which can do things which benefit them all. On the other, as we shall be recommending in a subsequent chapter, steps should be taken to give them a greater voice in those federal institutions and policies which affect them.



One area where coordination is essential is economic stabilization. One way such stabilization may be pursued is through monetary policy, a field which should remain under federal control. When applied to government budgets, the term stabilization refers to the conscious variation of government taxation, expenditure and borrowing in order to counteract business cycles and to maintain the pace of activity close to the potential of the economy.

In a federal union such as ours, fiscal decentralization is pronounced and yet regional economies are in various ways highly integrated with one another. The fact that the public sector is broken down into a number of separate political entities makes it difficult to use budgetary instruments for stabilization purposes, a drawback that can only be overcome through effective joint policy coordination.

Mechanisms for this purpose already exist in Canada. One is the conference of finance ministers, held annually in November. We believe the conference could be used more actively. More specifically, it should be used to develop a consensus on the country's economic outlook and to make short-term economic forecasts. It should also provide the opportunity for both levels of government to share and consolidate information about planned expenditures and anticipated revenues and borrowings. The importance of this type of meeting can hardly be exaggerated for the preparation of both federal and provincial budgets.

### **Regional economic development**

In addition to the need for maximizing the size of the surplus produced by the federal union, consideration must be given to regional equity in the sharing of the benefits of the union. The simple reason is that people from any one region may see no reason for remaining within the economic association if they are convinced that the sacrifices they make exceed their benefits.

In any economic association, some component parts are bound to reap greater benefits than others from tariff, transportation, industrial development and other common policies. Whether this may be attributed to the functioning of the economic union or to other factors, large disparities in income, growth and employment opportunities among regions inevitably become sources of tension and grievance.

This very difficult problem is not unique to Canada, for it can be found both in other federations and in common markets and unitary states. For our part, we sympathize with the many speakers who came before us to explain how it affects the life of millions of Canadians and handicaps whole regions in their social or cultural development.

The problem of regional disparities has traditionally been viewed in Canada in terms of the difference in the average well-being of inhabitants. The alternative approach would be to focus on the relative size of regional economies. Because of the way regional disparities are usually seen by economists, Canada's corrective measures have included encouragement for migration of people from one region to another with greater opportunities, and the movement of capital to regions where return on investment is high. But Canada has also developed substantial measures to redistribute financial resources among the provinces. Particularly significant is the complex network of interregional transfers which now

embraces a variety of programs. Major components are equalization payments from Ottawa and federal contributions to post-secondary education and to provincial programs of health and welfare. Of significance too are the interregional transfers implicit in national programs such as unemployment insurance. By itself, this complex network constitutes one of the main ways benefits from the union are shared in Canada.

All these measures have helped Canadians to understand and deal with regional disparities, and the system of provincial revenue equalization is particularly imaginative and praiseworthy. Because it is now an essential element of benefit sharing—the third of our main principles—we propose that the principle of equalization and the central government's responsibility for it be entrenched in the constitution.

But, good as they are, we doubt that current approaches to equalization and to regional development will produce an enduring balance among regions. Because serious disparities remain, additional efforts by the provincial and central governments must be made. For this reason, we propose steps to equalize not only the standards of public services, as is presently the case, but economic opportunities as well.

The current program of equalization now includes only 50 per cent of the provincial revenues from non-renewable natural resources. Notwithstanding the necessity to contain the burgeoning costs of equalizing the energy resources accruing mostly to a single province (Alberta), the 50 per cent limit introduces an arbitrary element into a formula which purports to equalize to the per capita national average virtually all provincial revenue sources. It also reinforces the need recognized by many experts, to have non-renewable resources equalized on a different basis.

We suggest that the equalization formula should be modified by dividing the provincial revenue sources into two groups. The first group would contain the twenty-two "ordinary" revenue sources which would be equalized and distributed according to existing arrangements; these payments would amount to \$1.9 billion in 1978-79. Entitlements associated with equalizing 50 per cent of the revenues from non-renewable resources would constitute a second set of payments. Total equalization payments now attributable to these revenue sources would be increased from over \$800 million to about \$1.6 billion, because the positive entitlements of Ontario and British Columbia (presently non-recipient provinces) would be included. Unlike the case for ordinary revenues, the second set of entitlements would be unrelated to the relative fiscal capacities of the provinces; rather these payments would be allocated according to some indicators measuring the degree in which provincial economies have experienced below average economic performance. They would be block grants for the purpose of encouraging economic development in provinces of relatively low rates of growth. In other words, the economically disadvantaged provinces would get a share of the benefits from integration, which could be used exclusively for their development.

It should be clear that we feel the central government should have wide responsibility for regional economic balance, and the broad taxing and spending powers to meet it. This, of course, does not mean Ottawa should use its powers without regard to the interests of the regional governments or without limitations.

### **Medium-term economic strategy**

In addition to short-term stabilization policy, there are other policy areas in which a federation may fail to realize full benefits and reasonable equity because of institutional deficiencies. These areas are so broad and involve the coordinated use of so many instruments that the boundaries between the two orders of government are inevitably crossed. The most obvious example is industrial strategy, the main weapon for economic adjustment. Here there appears to be no substitute for further concentration of power in the central government, a solution which runs counter to the realities of dualism and regionalism. Yet we believe both principles can find expression in such policies.

In this regard, we feel that the experience of two recent conferences of first ministers on the economy indicates real promise. Indeed, we think such conferences should be held on a regular basis, possibly two or three years apart, so that the medium-term character of the policies developed could be better defined. The process of intergovernmental discussions might also be improved by allowing participation of business and labour groups.

### **The Quebec economy and federation**

Quebec's dissatisfaction with Confederation goes beyond economic considerations. It is rooted in the Canadian federal system which in the eyes of Québécois has somehow failed to give Quebec the desired degree of political autonomy in several important policy areas. While the issues are exceedingly complex they largely revolve around political matters such as the distribution of powers. Yet in the debate over the possible secession of Quebec economic considerations loom very large.

We have examined the evidence provided by a number of recent studies dealing with interregional trade, the interprovincial shipments of manufactured goods, the number of jobs dependent upon the Canadian market, federal expenditures in Quebec, and other related topics. The major conclusion to be drawn from trade data is that Quebec's economy is highly dependent upon the Canadian common market. Canada's tariff structure and trade policy have a major impact on the level of production, employment and income of that province's manufacturing sector. Compared with its international exports, whose production takes relatively large inputs of natural resources and technology, Quebec's trade within Canada is based upon the manufacture of labour-intensive products. It relies on Canadian markets for the sale of about \$7 billion of these goods, most of which could not withstand foreign competition. Severing the ties to Canada's customs union would profoundly disrupt Quebec's economy. Quebec's and Ontario's favourable trade balances with the rest of Canada unquestionably indicate that both provinces derive definite advantages from the Canadian customs union.

### **Income disparities between francophones and anglophones**

Per capita income in Quebec now is approximately 90 per cent of the Canadian average. This figure, however, obscures the fact that the average income of francophones is considerably below that of anglophones in the province. Even so, there is substantial evidence that this gap has dramatically decreased in recent years. The decrease in the difference of average salaries for male workers has been most impressive: from 52 per cent in 1960 to 32 per cent in 1970 to 15 per cent in 1977. Similarly, what might be called



the bonus for being bilingual has decreased in the case of francophones and increased for anglophones. What this implies is that French is increasingly becoming the language of work in the province of Quebec. It is reasonable to conclude that the remarkable reduction in the earnings gap may be attributed to two main factors: improvement in the education and training of the labour force, and a significant rise in the status of French as the language of work. Both changes should mainly be credited to the policies of the Quebec government, though the federal government has had a complementary role.

### **Quebec and the surplus from economic union**

Several reasons have been offered to explain Quebec's poor economic performance and the problem of chronic unemployment: deterioration in the competitive position of weak manufacturing industries, the vulnerability of resource-based industries to changing international conditions, an inadequate rate of economic development and an insufficiently mobile labour force. Yet many Quebecers view the problem as a failure of those federal postwar policies which were designed to achieve full employment. For them, the record of central government policies aimed at economic stabilization is poor; such policies have failed to create the economic development needed to provide adequate jobs. Moreover, regional adjustment policies directed at curing unemployment through increasing the mobility of labour have been particularly unsuited to Quebec. Here, the social and cultural sacrifices both to the individual who is required to move and to the community he leaves behind, are very significant. While this is also the case for other provinces, it is especially pronounced for those leaving Quebec, where mobility may mean moving to a different linguistic community.

Statistical evidence from recently developed provincial accounts fails to establish that Quebec has been a major net recipient of federal funds (that is, federal expenditures minus tax contributions from Quebec) until quite recently, when temporary subsidies for oil imports were established. Moreover, the evidence confirms in part the current contention that central government expenditures have been concentrated in income support measures, while the province has been receiving a disproportionately small portion of funds to generate employment. Most comparisons with Ontario's economic performance since the Second World War show Quebec losing ground in terms of investment, employment, manufacturing activities, and in service activities of the private sector. These indicators tend to reveal that Quebec's share of benefits from the union have been progressively decreasing. Hence, its net surplus from union, while still positive, has been progressively eroded, and now may well come mostly from the protection provided for soft economic sectors, a dubious advantage from a long-term perspective. Hence, it is not surprising that more and more Quebec economists are critical about current federal economic arrangements.

The principal conclusion to be drawn from this analysis brings us back to the surplus generated by economic union and its use for economic adjustment and industrial restructuring. It is no secret that the Quebec economy and particularly large portions of its manufacturing have to be restructured and reoriented to other forms of production. It should be clear that a challenge of such magnitude would be easier to meet if financial and economic resources from elsewhere were available. It is precisely one of the main economic features of Canada's federation to provide interregional transfers. Thus, for a

region facing massive economic adjustments, a federation offers definite advantages if they are put to use.

### **Consequences of Quebec separation**

Everywhere the Task Force went, the question inevitably came up: "What would be the economic consequences of the secession of Quebec?" No one has been able to tell us conclusively what these consequences would be. But we have views on the subject.

First of all, we have heard from a number of provincial political, business and labour leaders outside Quebec who have said, or at least implied, that their province too might do better outside the federation. Some were even willing to consider that possibility if the rest of the country continued to ignore their particular regional needs. In short Quebecers are not alone in voicing such feelings.

We know that a country is not a business deal. Reliance on a "balance sheet" approach is certainly no sign of commitment to Canada. Economics will be an important factor, but not the only factor in the decision of Quebecers for or against the Canadian economic union. Nor will the return to prosperity by itself solve most of our basic problems, although it would obviously be of some help. But it says something in favour of the present economic union that the Parti Québécois would like to retain many of its elements, although admittedly in a different political framework.

During our journeys we have heard a lot about "sacrifices being made for Quebec," and about "special treatment being given to Quebec," favours of all kind distributed by that "French power" in the central government cabinet. There is simply no evidence to support the contention that Quebec has been or is getting more than a fair share of the "surplus" generated by the Canadian economic union. Moreover, French-speaking Quebecers experience considerable social and political costs as a result of economic union.

To arrive at precise facts and figures about the economic consequences of Quebec's secession would imply a number of assumptions based on factors that cannot be measured. Prospective economic decisions of individuals, groups and political entities are based on beliefs, impressions, moods and reactions that can hardly be anticipated. One cannot predict the reaction of Canadian or foreign investors, traders and tourists if Quebec does secede. Some might be pleased, others disconcerted. Furthermore, Quebecers of both languages groups might vote with their feet, or with their chequebooks; indeed, some already have.

It is equally hazardous to predict how secession would affect the economy of Quebec and Canada because we cannot see in advance the way it would happen. Would it take place in calm or in anger, suddenly or gradually, in full or in part, and with or without an association arrangement that would preserve a good deal of economic integration? The Task Force has no answers to such questions. As political or economic forecasters, we are not ashamed to admit our limitations, and we are in good company in doing so.

It seems to us that Quebecers will not be convinced to stay in Confederation by others raising the spectre of the dire economic consequences of secession, although it might be



wise for Quebecers to think carefully about the possible risks. Nor will Quebecers be convinced by an attempt to reinterpret their economic history in Confederation in a more rosy light, although a balanced and clearer vision of the facts would help the debate. What is needed instead is that Quebecers be shown that they can have a more promising future within Confederation than outside of it. To this effect, we are convinced that the Canadian federation can be restructured and can achieve a better overall balance that would both suit and support a distinctive character for Quebec. We will take up this issue in the next chapter.







## A revised constitution for Canada

We share the widespread public view that among the requirements for Canadian unity is a fundamental revision of the Canadian constitutional and political structure. Many English-speaking Canadians, particularly in the west and the Atlantic provinces, are critical of the way our political system has been working. The vast majority of Québécois want, at the very least, basic reforms. Although the BNA Act has served Canada well for 111 years in a variety of changing circumstances unforeseen by the Fathers of Confederation, and although there have been numerous piecemeal adjustments over the years, there is a growing gap between the structure created in 1867 and the social, economic and political realities of the vastly different Canada of 1979. We believe, therefore, that there should be a new Canadian constitution to meet the aspirations and future needs of all the people of Canada.

### 1. The objectives of constitutional reform

In our view, constitutional revision should have three major objectives: (1) to preserve and reinforce the ability of the central institutions to serve as the legitimate focus for the common interests of all Canadians; (2) to provide greater institutional responsiveness to the regional and provincial self-confidence reflected in current demands for greater provincial autonomy and for more effective provincial influence upon central policy formulation; and (3) to provide the majority of Québécois with an acceptable federalist response to their desire to maintain their distinctive cultural and social identity and to their deep-rooted grievance that our political institutions do not adequately reflect the dualistic character of Canada.

Furthermore, the reform of our constitutional and political system must also take account of the need to create institutions which encourage attitudes of accommodation rather than confrontation among the different communities and governments, particularly in the area of federal-provincial relations. It must provide for the increasing demands for more responsiveness, sensitivity and accountability to the individual citizen. Finally, it must take account of the relative capacity for effectiveness and efficiency of the different orders of government.

To reflect these objectives, the new constitution should be adopted in Canada, be in the English and French languages with both texts official, and include in the preamble a declaration that the people of Canada (i) maintain and reinforce their attachment to democratic institutions, federalism, human rights and the principle of supremacy of the law; (ii) recognize the historic partnership between English and French-speaking Canadians, and the distinctiveness of Quebec; (iii) affirm the special place of the native peoples of Canada; (iv) recognize the richness of the contribution of Canada's other cultural groups; (v) recognize diversity among Canada's provinces and the need to permit all regional communities to flourish; and (vi) seek the promotion of the social, economic and cultural development and the equality of opportunity for all Canadians in all regions of Canada.

### 2. A parliamentary and federal system

While advocating major revisions to our constitutional and political structure we believe that Canada should retain the combination of parliamentary institutions and a federal



system, a combination which was the creative innovation of the Fathers of Confederation and a precedent copied in many other federations established since 1867.

In a country marked by diversity and operating a federal system there are some advantages to a presidential and congressional system such as that in the United States, or a collegial executive with a fixed term as in Switzerland, but we have concluded that these possible benefits are outweighed by the advantages of the cabinet system of parliamentary democracy. A parliamentary system allows for stronger executive leadership and more rapid implementation of legislation, since the executive is not separated from the legislature. By comparison to other forms it makes the executive, and through it the public service, more directly and continuously accountable to the elected representatives and the general public. This is achieved through the daily question period and the requirement of ministerial accountability, and the need to win votes of confidence in the legislature on major pieces of legislation.

The parliamentary cabinet system is part of the political traditions of both Britain and France, the two major sources of our cultural heritage, and has been rooted in our political experience for almost 130 years. Moreover, the parliamentary cabinet system appears to have widespread support and does not seem to be an issue of contention between French and English-speaking Canadians or among the variety of other ethnic and cultural groups in Canada. Opinion on the constitutional monarchy in Canada appears to be more controversial and we have concluded that attempts to institute any change at this time would do more to divide than unite Canadians.

After listening to many Canadians on our tour and elsewhere, and after much careful thought, it is our belief that a substantially restructured federalism is preferable for Canadians to some other form of political association. We offer a number of reasons for this. A federal system makes possible the accommodation of desires for both unity and diversity. It enables citizens to act through an effective common government for those purposes where there are common goals or benefits (such as in military, diplomatic or major economic matters), while making it possible for citizens to act through autonomous provincial governments for those purposes in which they wish to maintain their own distinctiveness. It allows the creation within a larger political system of different provinces or governmental entities through which a minority concentrated in one region can develop its own institutions.

Federal systems are generally more stable and more effective than confederal systems in which the central institutions consist of delegates of the component state governments each retaining their complete sovereignty. This is because a federal system establishes a power balance between the two orders of government and retains a capacity for generating positive directions at the centre as well as in the provinces. Furthermore, a crucial disadvantage of the confederal form of union or association is the difficulty such systems have in achieving an effective redistribution of resources to correct disparities among the constituent units. It should not be forgotten that both the United States and Switzerland abandoned confederate forms of political organization because of their ineffectiveness and each looks back upon the adoption of a federal organization as a turning point in its effective development. Moreover, the slowness of the European Economic Community in achieving its original objectives has been a source of frustration to its proponents.

This does not mean that we are unaware of some weaknesses of federalism. We acknowledge that a federal system often slows the process of rapid and effective policy-making in such areas as the economy, that it sometimes tends to generate conflict between governments, that it sometimes creates opportunities which vested interests can exploit to assert themselves against the common public interest, and that it is prone to stresses whenever large regional disparities emerge or dissatisfied minorities seek an outlet for their grievances. But problems with minorities, regionalism and separatist movements are by no means confined to federations, as the experience of Britain, France and Spain shows. On balance, we have concluded that a federal system, albeit a substantially restructured one, is still the optimal system for Canada.

### 3. The character of our proposals for a revised federation

Within a basic parliamentary federal framework there is extensive scope for variation in each of the elements which go to make up a federal system—the number and size of regional units of government, the actual distribution of legislative and executive powers and revenues, the instruments facilitating relationships between the two orders of government and the representativeness of the central institutions.

The number and size of the component units of the federation is an important variable because it affects the relative capacity of the units to perform functions. For example, the small size of cantons of Switzerland (twenty-three of them in a total population less than Ontario's) clearly affects the scope of governmental functions they can perform. In the Canadian context, among the alternatives one might consider are the possibility of two units in a binational federation, a federation composed of four or five regions, one composed of the existing ten provinces, one composed of twelve provinces if the territories were to become full-fledged provinces, or, if existing provinces were split, a federation composed of many more units. On balance we have concluded that the weight of historical continuity and current provincial distinctiveness will require the maintenance of the existing ten provinces, possibly with the eventual addition of the territories, as the basic regional units of government. This means that the consequent dramatic variation in the cultural character, size, population, resources, fiscal capacity and administrative scale of the existing provincial units will continue. One simple example of this disparity is the substantial number of municipalities in other provinces which serve more people than the province of Prince Edward Island. An implication of this variety and disparity is that it will require a greater recognition, possibly in constitutional form and certainly in political practice, of the asymmetrical relative capacity, power and character of the provincial units within the Canadian federation.

Our proposals for major changes in the Canadian federal system are focused in six key areas: (1) the clarification and adjustment of the constitutional distribution of powers between the central and provincial governments; (2) better methods for handling federal-provincial relations, in particular through the replacement of the Senate by a Council of the Federation composed of provincial delegates; (3) a revamped and formally independent Supreme Court of Canada; (4) provision for constitutional amendment and flexibility; (5) electoral reform to improve the regional representativeness of parties in the House of Commons; and (6) constitutionally entrenched fundamental rights. All of these must revolve around the attempt to give a better expression to the principles of duality, regionalism and the sharing of benefits and powers within a viable Canada.

Our approach is an integrated and systematic one in which the various elements are linked and interrelated. In arriving at any balanced overall federal solution it may be possible for political leaders to achieve compromises by trading off variations in particular elements in order to achieve overall agreement. At the same time, however, in considering the various elements individually, it must not be forgotten that they are interrelated and that our recommendations on the distribution of powers, on instruments for federal-provincial relations and on representation in central institutions form a balanced interrelated and integrated set of proposals.

The deep-rooted crisis before Canada calls for a more systematic approach than a negotiated consensus between central and provincial governments on a limited number of discrete topics will provide. To achieve such a systematic resolution will require our political leaders at both levels of government to rise above traditional jealousies and to achieve a spirit of creativeness and innovation, such as that which existed in the 1860's when out of political crisis and deadlock Confederation was conceived.

### The distribution of powers

A critical issue in any federation is the distribution of legislative and executive powers and revenues between the central and provincial governments. The problem is a complex and controversial one, involving the reconciliation of the need for larger political units, desirable for such purposes as economic development, with smaller political units, desirable to ensure regional distinctiveness and responsiveness to the citizens.

#### 1. The need for clarification and adjustment

A number of factors have made a review of the distribution of powers a basic issue in the current Canadian debate. As the role of both the central and provincial governments has grown enormously, it has become increasingly difficult to say where the responsibilities of one order of government end and those of the other begin. There appears to be a federal and provincial dimension to almost every area of government activity, from culture to economic development; and even when two governments are acting wholly within their own constitutional jurisdiction they may easily find themselves in competition or conflict. Furthermore, as new provincial responsibilities have emerged over time, an imbalance between their legislative responsibilities and their fiscal capacity has led to the development of a complex system of fiscal transfers from the central to the provincial governments and of shared-cost programs which have progressively blurred the delineation of their responsibilities. It is not surprising that in a time of growing provincial strength and maturity such overlapping jurisdiction should be a source of friction. Examples in recent years include the joint publications by the western premiers charging that Ottawa has intruded into numerous areas of provincial jurisdiction and Ottawa's counter-charges. But what makes this issue particularly critical at the present time is the question whether the distribution of powers can be revised in such a way as to meet the pressure from the provincial governments for greater responsibilities in their areas of particular concern and from Quebec to be able to maintain and indeed develop its distinctive character, while at the same time retaining for the central government sufficient powers to be effective and viable.



We have concluded that there is need for a clarification and adjustment in the distribution of powers to reduce these sources of friction and to fit more adequately the contemporary socio-economic, technological, cultural and political realities of Canada. At the same time we would caution that in any federation the functions assigned to the two orders of government can never in practice be totally isolated from each other into watertight compartments; there will always be limits to the precision with which constitutional draftsmen will be able to define the relative responsibilities of the two orders of government.

Our approach to this issue is a general one. Rather than drafting a blueprint for an actual revised distribution of powers, we outline as a guide to the public and to those political leaders who must negotiate the final text of a new constitution the general considerations which we believe should govern the revision of the distribution of powers.

### **2. The principal roles and responsibilities of the central and provincial governments**

The revision of the distribution of powers must respect the need for a central government that can handle problems of Canada-wide importance and maintain a viable Canadian federation, for provincial governments that can handle regional and provincial concerns for local prosperity and preferences, and for the Quebec government to maintain and develop its distinct culture and heritage. In meeting these needs the principles of power and benefit sharing, regionalism and dualism which we identified earlier are fundamental.

We see the essential role and responsibilities of the central government as being to sustain, encourage and symbolize a Canadian identity and pride, to ensure the security and preservation of the Canadian federation, to have an overriding responsibility for the conduct of foreign policy, to control the major instruments of economic policy, to oversee interprovincial and international trade, and to stimulate economic activity within the federation. In addition, because the resources and economic advantages of Canada are not spread evenly throughout the country's ten provinces, the central government must be in a position to assume equitable benefit sharing for all Canadians. This means that it must have a responsibility for combatting regional disparities, establishing appropriate minimum standards of living for all Canadians where appropriate, and redistributing income between individuals and between provinces.

We see the essential role of the provinces as being to take the main responsibility for the social and cultural well-being and development of their communities, for the development of their economies and the exploitation of their natural resources, and for property and civil rights. This implies exclusive (or occasionally concurrent) jurisdiction over matters pertaining to culture, education, health, social services, marriage and divorce, immigration, manpower and training, the administration of justice, natural resources including fisheries, regional economic development, trade within the province, consumer and corporate affairs, urban affairs, housing and land use, and environment. It implies, as well, correspondingly adequate powers to tax. The provincial governments should also have the right, as long as they abide by Ottawa's overriding foreign policy, to establish some relations with foreign countries and to sign treaties in matters coming under their jurisdiction.

In the case of Quebec, it should be assured of the full powers needed for the preservation and expansion of its distinctive heritage. This would require either exclusive or concurrent

jurisdiction, assigned to all provinces generally or to Quebec specifically, over such matters as language, culture, civil law, research and communications, as well as related power to tax and to establish some relations in these fields with foreign countries.

In our opinion, it should be possible to meet these objectives in a coherent way, consistent with the realities of modern Canada. At the same time, delineating the distribution of powers more clearly would reduce those running controversies between the two orders of government which aggravate their relations and increasingly irritate the public.

### **3. The constitutional equality of the central and provincial governments**

A definitive characteristic of any federal system is the equality of status under the constitution of the two orders of government, central and provincial, in relation to each other.

The question of status is a problem of attitude as well as of constitutional provision. There are a number of provisions in the BNA Act which imply an inferior constitutional standing of the provincial governments and these have led some commentators to describe that constitution as "quasi-federal" rather than genuinely federal. Moreover, we have been told repeatedly that the attitude of politicians and civil servants in Ottawa toward their provincial counterparts is that of a superior dealing with an inferior. This is obviously an extremely difficult area in which to obtain accurate or scientific information; but, if half the things that were said to us on the subject are true, we cannot help but regard this as a significant cause of conflict between governments. We do not wish to imply that the provinces are blameless in their behaviour, although we can report at the same time that no one has ever complained to us that a provincial government has been disposed to treat the central government as an inferior.

Since we view the provincial governments as equal in stature and maturity to the central government, we have no difficulty in stating that in a restructured, genuinely federal union the provinces should be recognized as having a constitutional status equal with that of the central government.

### **4. Equality of provinces and distinct status**

Quebec's unique position as the province within which a linguistic minority within the country as a whole is in a majority has frequently led to suggestions that that province should be granted powers over matters denied to other provinces. But many in other provinces have argued that no province should have a privileged "special status" under the constitution and that all provinces should be equal in law-making terms.

In considering this issue it is vital to recognize that all existing federations—there are more than twenty with a total population of a billion people—are in practice what we might call asymmetrical: their component states or provinces differ in size, culture, social structure, wealth, administrative capacity and power, and these differences are reflected in political and even constitutional terms.

Since 1867 Canada herself has mirrored this fact: some provinces have proportionately more Commons or Senate seats than others, the use of the English and French languages



is guaranteed differently by different provinces, Quebec's civil law is different from the common law used in other provinces, and financial transfers from Ottawa to the provinces have taken account of their different circumstances. Furthermore, recent federal-provincial programs have accepted the right of a province to opt in or out—that is, to differ in what they do. In short, the Canadian federation, like others, from the beginning has never been, nor can it be, totally symmetrical.

At the same time we must recognize, as the experience of other federations indicates, that there are limits to the degree of constitutional asymmetry that can be tolerated without producing disruptive effects. A particularly pertinent example was the fatal tension within the Malaysian Federation during Singapore's brief membership in 1963-65 caused by the marked variance in its autonomous powers and correspondingly limited participation in central policy-making. Furthermore, many Canadians who are otherwise sympathetic to the desire of Québécois to maintain their culture and heritage, find the notion of "special status" for one province, with its connotation of "privileged" and favoured treatment, repugnant to their belief that all Canadians should be equal under the constitution.

Nevertheless if we perceive the Canadian duality in a political perspective as the expression of two realities, neither of which is superior to the other, then to recognize the distinctiveness of each is not to confer upon either of them a "special" or "privileged" status. Each is as special as the other: the only special feature is that one side of the duality is expressed politically at the level of provincial governments by nine and the other by one. "Special status," used as a term inferring favoured treatment, should therefore be avoided. But given the variety of distinctive arrangements which have been found appropriate for various provinces (for example, in representation in central institutions or central transfers to the provinces), we believe that the distinctive role of the Quebec government as the single province containing a French-speaking majority must be recognized. Nor is it inconsistent with our traditions. Indeed, in the years since 1867 we have learned to live with the fact that Quebec has a considerable degree of what we think should be labelled a distinct status: in its civil law, in the recognition of French as an official language, and in the fact that three of the nine judges of the Supreme Court must come from that province. ✱

Let us put our conviction strongly: Quebec is distinctive and should, within a viable Canada, have the powers necessary to protect and develop its distinctive character; any political solution short of this would lead to the rupture of Canada.

What are the implications of this for the distribution of powers? There are two possible approaches. One is to assign to Quebec formal law-making powers, denied to other provinces, over such matters as culture, language, immigration, social policy, communications and some aspects of international affairs.

The second and, in our view, much the more preferable approach is to allot to all provinces powers in the areas needed by Quebec to maintain its distinctive culture and heritage, but to do so in a manner which would enable the other provinces, if they so wished, not to exercise these responsibilities and instead leave them to Ottawa. There are two methods of achieving this: to place these matters under concurrent jurisdiction with provincial paramountcy, thus leaving provinces with the option whether to exercise their overriding power in these fields; and to provide in the constitution a procedure for the intergovernmental delegation of legislative powers. In our view both methods should be used.

### 5. Criteria for the distribution of powers

The draftsmen for the distribution of powers in a restructured federalism should take account not only of the points made in the preceding sections of this chapter but of the following criteria:

- Public activities of Canada-wide concern should normally be handled by Ottawa and activities of provincial or local concern by the provinces.
- Consideration should be given to which order of government can fulfil a responsibility most efficiently and most effectively in relation to cost. In measuring effectiveness consideration must include not merely administrative and economic efficiency but political responsiveness, sensitivity and closeness to the concerns of the individual citizen.
- Where there is already common agreement there is an advantage in incorporating that agreement. It would also be advisable to respect existing federal-provincial agreements such as the recent ones concerning the selection and settlement of immigrants.
- Where there is no contention there is an advantage to maintaining continuity with past practices. For example, while the *caisses populaires* of Quebec and the credit unions of the other provinces might logically fall under central jurisdiction over economic matters, they have become so much a part of provincial and local traditions that we think they should remain so. Furthermore, in the interests of continuity, whenever there is agreement, the retention of existing wording is likely to produce greater certainty regarding future judicial interpretation.
- The allocation of competence over specific subject matters should be evaluated in terms of the effect upon the overall balance of responsibilities which each order of government will have.

### 6. The form of the distribution of powers

All federal constitutions contain, in one form or another, lists which allocate to each order of government competence to legislate with respect to the powers specified. Subject matters may be assigned exclusively to one order of government or the other, concurrently to both orders with paramountcy (i.e., overriding authority) assigned to one or other order, or remain unlisted and so become the responsibility of the order of government to which the residual authority is assigned. An arrangement existing in some federations, most notably the Federal Republic of Germany, is the provision in some subject matters for the central government to enact laws while leaving the actual administration or enforcement of the law to the provincial government. In addition, in some federations, including Canada under the BNA Act as interpreted by the courts, the central government may in certain instances be given specific powers to override otherwise normally exclusive provincial powers, for example in emergencies.

A number of federations, such as the United States and Australia, have enumerated only central exclusive and concurrent powers, leaving residual powers to the states, but their experience indicates that in practice such an arrangement has narrowed rather than protected state powers.

We have, therefore, opted in favour of a full enumeration of both central and provincial powers. In a revised constitution the allocation of powers should be listed under seven categories:

- a list of exclusive central powers
- a list of exclusive provincial powers
- a list of concurrent powers with central paramountcy
- a list of concurrent powers with provincial paramountcy
- a limited list of those areas where central laws would be administered by the provinces
- a limited list of those powers requiring joint action by Parliament and the provincial legislatures (for example with respect to the modification of provincial boundaries)
- a category of special overriding central powers with limitations specified.

We believe that as far as possible matters should be placed in one or other of the two exclusive lists. We would do so even to the extent, where appropriate, of dividing a given subject area so that one part is assigned to one government and one part to another, an arrangement found frequently in the Swiss constitution. This would disentangle as far as possible central and provincial powers, keeping to a minimum the areas of concurrent jurisdiction which require intergovernmental cooperation and which can become at the same time potential sources of conflict. Given the tradition in Canada of parliamentary cabinets responsible to their legislatures, the scope for the category of laws made by the central government and administered by the provinces will be limited. But we do have a precedent in the Criminal Code, enacted by the central parliament but administered by the provinces, which indicates that there may be wider potential for uniform central laws to be combined with flexible provincial enforcement.

Although we have advocated a careful specification of seven categories of central and provincial powers, it is impossible to cover all possible eventualities by lists of specific powers. Federal constitutions, therefore, usually allot to one order of government or the other those powers which are not listed. In most federations, this residual power is vested in the member state governments. In Canada, however, under the BNA Act's "peace, order and good government" clause, it is largely vested in Ottawa. A third alternative advanced recently by some is a *shared* residual power in which an unlisted subject matter would be assigned according to whether it was of interest to the central or provincial government. In our view it would be difficult to avoid the impression that only unimportant residual matters would be attributed to the provinces. On balance, therefore, we have concluded in favour of assigning the residual power in a revised constitution to the provincial governments, as is the case in most other federations.

### **7. A functional approach to the allocation of specific powers within policy areas**

When it comes to the assignment of specific powers to governments we would advocate that those involved in the negotiations adopt a systematic functional approach.

The enumerations of powers in sections 91 and 92 of the BNA Act lack coherence or logical theme to their arrangement. The powers refer in different cases to the purposes of policy

("peace, order and good government"), to the subjects of a policy ("Indians"), to the instruments of a policy ("weights and measures") and to the objects of a policy ("education", "immigration", "agriculture"). Some powers are broad in scope ("trade and commerce", "property and civil rights"), while others are very specific ("beacons, buoys, lighthouses and Sable Island"). The arrangement of items is haphazard, related items not being grouped together. Furthermore, there has recently developed a number of major policy areas, such as pollution or energy, which cut across the traditional subject matters. We believe that clarification would be assisted by a coherent and functional approach to the actual enumeration of powers.

We therefore advocate the grouping of subject matters in terms of general domains of government activities. Such broad policy areas might include: external affairs, defence, economic policy, transportation, communications, natural resources, administration of justice and law enforcement, the status and rights of citizens, culture, health and welfare, habitat and environment. Within each of these domains would be listed the more specific subject matters arranged in related groups. For example, under economic policy might be listed trade and commerce (differentiating external trade, interprovincial trade and intra-provincial trade), monetary policy (including foreign exchange and currency and coinage), financial institutions, taxation, (distinguishing specific taxing powers), public borrowing, and corporations and companies. Under culture might be listed language, education, schools, universities, archives, research, exchanges, copyrights, books, films, arts, leisure, marriage and divorce, property and civil rights. Under habitat and environment might be listed urban affairs, housing, land use, parks, protection of the environment and control of pollution.

Once activities are divided in this way, it should be possible to distribute specific responsibilities within a given general domain exclusively or concurrently to the order of government best suited to carry them out. In most of these broad domains both the central and provincial governments will have some specific interests, but by allocating subject matters or even parts of subject matters to one level or the other it will be clear how the exclusive responsibilities of each order of government and the areas of concurrent jurisdiction within that domain relate to each other.

We believe that this functional approach should provide a clarity which has been lacking and that it should be easier to allot components than entire areas to a given level of government. When the courts are subsequently asked to determine the jurisdiction under which a new activity belongs, it would help them in interpreting the rationale of the distribution of powers.

### **8. Some contentious areas**

In recent years a number of areas of jurisdiction have proved particularly contentious. We have singled out some of these for particular research and analysis: natural resources (especially oil and natural gas), offshore resources and fisheries, communications, immigration, foreign relations, higher education, transportation, social policy, and urban affairs and housing. Although these studies are still in progress, it is possible to make some observations on the general approach we would advocate for reducing the degree of intergovernmental contention over these areas.



Each of these fields represents an area where both the central and provincial governments believe they have a legitimate interest and jurisdiction. This is in part the result of the changing perception of the role of governments in general in modern society. The expanded activity of both levels of government has given to almost every subject both a federal and provincial aspect. It is also a result of the fact that these fields in particular have been marked by radical changes in technology, international developments, environmental circumstances and social impact, altering out of all recognition the way in which jurisdiction over such areas was viewed thirty years ago, let alone in 1867. Examples are the impact of OPEC and the oil embargo upon the price and importance of oil and gas resources; the effect of the extension of Canada's offshore boundaries to the 200-mile limit or even the whole continental shelf and the technological advances in extracting resources from the oceans and their seabeds and in fishing methods; the rapid advances in sophisticated telecommunications technology (in which Canada is in many respects leading the world) and the ever-widening impact of communications on every aspects of life Canada-wide and local; and the expansion of Canadian universities to give much wider access to higher education at the same time as these institutions have developed as the bases for advanced research requisite for Canadian development. These developments have transformed these fields into ones in which there are both Canada-wide and distinctive provincial dimensions and in which, therefore, both the central and provincial governments have a very keen interest.

In resolving conflicts over jurisdiction in these areas the present distribution of powers under the BNA Act is not very helpful. To take an example: in the field of oil policy, the conflict between the Alberta government and Ottawa emerges specifically as a clash between the provincial ownership of resources and the central government's control over international and interprovincial trade and commerce. In communications, the clash arises between the central government's view of communications as an integrated Canada-wide system serving as a powerful instrument for nation-building and the insistence of the provinces, particularly Quebec, that the impact of communications on local and provincial responsibilities is so pervasive that provincial control is necessary for them to meet the demands placed upon them and for the provinces to safeguard regional and local distinctiveness.

In our view, any attempt to reduce the friction and resulting frustration and conflict over each of these contentious areas would appear to require two steps. The first is a careful review of the aspects of that policy area with a view to delineating by agreement the aspects which might appropriately be placed under the exclusive jurisdiction, of one government or the other, or under concurrent jurisdiction. In this process the criteria and considerations we have referred to in the preceding sections of this chapter should be taken into account.

The field of immigration can serve as an illustration of the sort of approach we have in mind. Although it is one of the few areas formally placed under concurrent jurisdiction by the BNA Act, it was for so many years effectively under federal management. Federal control became increasingly contentious for those aspects of the immigration field which are more directly related to provincial and local interests. Intergovernmental negotiations have resulted recently in agreements between governments upon the appropriate jurisdiction over various aspects of the immigration policy area.



These agreements appear to have taken much of the heat out of the issue. Thus, it is now possible to envisage a distribution of responsibilities such that settlement and integration of immigrants is an exclusive provincial responsibility, selection criteria and levels of immigration to a province are concurrent with provincial paramountcy, recruiting of immigrants abroad and admission of refugees are concurrent with central paramountcy, and deportation of aliens and public safety come under exclusive central jurisdiction. We understand that in recent months central and provincial government representatives have been conducting a review of the areas of contentious intergovernmental overlaps and duplication, and we would hope that this effort to achieve a clarification and reduction of friction will be pursued. We must caution, however, that in areas as complex and rapidly changing as those we are considering in this section, an identification of central and provincial aspects of jurisdiction will not by itself ensure an adequate coordination.

The second step which is required, in each field, therefore, is the development of effective councils or other standing intergovernmental bodies. Membership in these councils should not be restricted to public officials but should include representation from the private sector in that field, to facilitate the formulation of policy at both levels of government that will effectively mesh with each other. In addition, the review of central legislation in such fields by the Council of Federation (which we propose in a subsequent section) should assist this process by reassuring provinces that their views will have a direct impact when Parliament legislates in these areas.

### **9. Taxing powers**

In all federations the allocation of taxing powers has been an extremely important and controversial subject. It is significant in three ways: (1) the allocation of financial resources will facilitate or limit the extent to which a government can fully exercise its assigned legislative and executive powers; (2) it affects the political balance because whichever order of government has the major financial resources has in its hands the means for political dominance; and (3) the assignment of fiscal and spending powers will determine which governments are able to use these instruments as levers to control the economy.

Broadly speaking, there are three approaches to the distribution of taxing powers. The first is to allocate specific sources of taxation to each order of government in terms of its perceived needs; the second is to retain all major tax resources in central hands with substantial unconditional transfers replacing provincial taxes; the third is to grant to both orders of government equal access to most revenue sources.

We favour the third approach. Experience in most federations indicates that attempts to allocate specific tax resources in relation to perceived needs invariably go quickly out of date. The second approach implies an unacceptable degree of centralization, a serious gap in accountability between the spending government and the taxpayer. There would, of course, need to be some specified exceptions to the general rule of equal access, an obvious example being that in order to maintain a common market within the Canadian federation the imposition of customs and excise taxes would be an exclusive central power. The provincial right to use indirect taxation would have to be qualified also to ensure that the impact would not be on persons outside the province. It would be our hope that the clarification of provincial powers over indirect taxation would reduce such frictions as those which have arisen recently over Saskatchewan's policies concerning the potash industry.

### 10. Overriding central powers

The category of special overriding central powers requires careful attention because such powers, specified or implicit, under the BNA Act enabling the central government to act in what might otherwise be considered a provincial field have been the source of considerable federal-provincial controversy. These are the emergency power, the declaratory power, the spending power, the powers of reservation and disallowance, and the power to appoint lieutenant governors.

There are times in both war and peace (in the latter case, for example, economic crises or natural disasters), when extraordinary circumstances make it necessary for the central government to assume for a temporary period emergency powers affecting areas of provincial jurisdiction. The time has come, however, to base this emergency power, not on court interpretations of the "peace, order and good government" clause of the BNA Act, but on express recognition in the constitution with safeguards written in. We say this because the existing emergency power violates the principle of non-subordination of the two orders of government and its abuse could endanger our federal system. When in future Ottawa seeks emergency powers it should be required to spell out the reasons in a proclamation, to obtain approval of the proclamation by both the House of Commons and the revised second chamber (which we propose in the next section) as soon as is reasonably possible, and to be limited for a specified duration.

Under section 92(10)(c) of the BNA Act, Parliament may unilaterally declare "local" works situated solely within provincial boundaries and within provincial jurisdiction to be for the general advantage of Canada or for the advantage of two or more provinces and hence subject to central jurisdiction. This so-called declaratory power has in the past been used to bring grain elevators, pipelines and many other projects under central jurisdiction. The frequent use of this power without provincial consent could seriously undermine the authority of the provinces. At the same time we recognize that historically the invocation of the declaratory power has had some beneficial results, for example contributing to the development of a comprehensive railway system and a successful international grain marketing scheme. We conclude, therefore, that the central declaratory power should be retained but that its use should be subject to the consent of the provinces concerned. ? ? !

Particularly controversial in recent years has been Ottawa's power to spend its revenues for any purpose, even in areas of provincial jurisdiction. Under it, such pillars of central government policy as hospital care and medicare have evolved. It would seem that the provinces generally do not object to the use of the spending power to fight regional disparities or to make equalization payments which most of them receive. But they have charged that Ottawa has gone beyond this to intrude in provincial spheres in a way that has undermined their autonomy and has forced provinces into programs they neither want nor need.

In our opinion, the spending power must be retained to enable Ottawa to ensure unconditional equalization payments to the poorer provinces and to ensure Canada-wide standards for programs in which a strong general interest has been demonstrated. But we think it, too, should have limits. The exercise by Ottawa of its spending power, whenever it is related to programs which are of provincial concern, should be made subject to

ratification by the reconstituted upper house which we are proposing. To further safeguard provincial autonomy, provinces should have the right to opt out of any program and where appropriate receive fiscal compensation.

In recognition of the principle of non-subordination, we would eliminate two methods by which provincial legislation can be blocked by Ottawa. Under the BNA Act, a lieutenant governor can refuse to give royal assent to a bill approved by his or her provincial legislature and "reserve" it for assent by the governor general, in effect the central cabinet. In addition, the central cabinet can also disallow a provincial statute within a year. Over the years more than one hundred provincial bills have been disallowed by Ottawa and some seventy have been reserved. But both methods have gradually faded from use and now are considered dormant. To eliminate these two powers would not only recognize a situation which exists, but would recognize the ability and right of the provincial governments to act as responsible non-subordinate bodies.

Likewise, we would recognize the constitutional equality of the two orders of government by having the Queen appoint a lieutenant governor on the recommendation of the provincial premier rather than on that of the prime minister, as is now the case. The precedent for such a procedure already exists in the regular Australian practice.

### The improvement of federal-provincial relations

Effective intergovernmental relations are a fundamental aspect of any federal system, as important as the distribution of powers. That means that the reduction of intergovernmental conflict in Canada will depend to a great extent on a general harmonization of relations between the two orders of government.

#### 1. The interdependence of the central and provincial governments

While we have advocated a clarification and rationalization of the constitutional responsibilities of the central and provincial governments, the functions assigned to the two orders of government in a federation can never be totally isolated from each other and will inevitably to some degree interpenetrate both administratively and politically. As the roles of both the central and provincial governments have grown, it has become increasingly difficult for one government to act in isolation from the other. A simple example will suffice to illustrate the problem. Many people agree that provincial control over natural resources should be strengthened and so should central control over trade and commerce. Yet in an age when governments are responsible for setting the terms on which natural resources are marketed in the world, these two constitutional responsibilities simply cannot be exercised independently of each other. Consequently, in order for public policy to be effectively implemented in this area some means must be found to promote cooperation between both orders of government on a continuing basis.

This situation applies to almost every area of constitutional jurisdiction. As we saw in the section on the distribution of powers, constitutional jurisdictions may be organized into broad domains of activity within which different specific powers are assigned to each order of government. For policy to be effectively applied within the broad area as a whole,



however, the specific powers which rightfully belong to both orders of government must be brought into play. It also means that any reform of the distribution of powers must be augmented by proposals for improved mechanisms and procedures for the conduct of federal-provincial relations.

### **2. The record of executive federalism**

The need for institutions to reconcile and harmonize the objectives of both orders of government is attested to by the spontaneous growth in recent years of a wide network of intergovernmental meetings and conference, at both the ministerial and official levels. This network of conferences has come to be known as "executive federalism" because of the way it responds to the new reality of interdependence through direct negotiations between the executives of both orders of government.

Executive federalism in Canada has done a great deal to adapt our federal system to changing circumstances and it has some remarkable achievements to its credit. To name only the most obvious: it has facilitated the implementations of fiscal equalization programs intended to reduce disparities among the provinces; to promote regional economic development, to provide basic health and social services up to a minimum standard across the country, and to negotiate a continuing transfer of financial resources and responsibilities from the central to the provincial governments.

But these successes should not hide the weaknesses of the process and its contribution to the present crisis of Canadian unity. The general public has been more aware of the dramatic public confrontations between central and provincial leaders which it has occasioned. The way in which the process has been conducted has often left provincial governments with the feeling the central government's choice of priorities and conditions has imposed a *fait accompli* upon them, distorting their own priorities, while the use of intergovernmental meetings by provincial leaders to score points against the central government for partisan advantage at home has exasperated representatives of the central government. The spectacle of Canadian governments wrangling constantly among themselves has done nothing to reduce cynicism about public affairs and it has presented Canadians with the image of a country deeply divided against itself.

Another unfortunate side effect of the current form of intergovernmental relations in Canada is that it has developed outside the framework of our traditional democratic and parliamentary institutions and has sometimes seemed to be in competition, if not in conflict, with them. For this reason, some observers have regarded it with suspicion as a weakening influence on Canadian democratic life.

### **3. Options for the conduct of federal-provincial relations**

The lesson we draw from the record of recent federal-provincial relations in Canada is that in a parliamentary federal system with the dominant role played by cabinets, the developing practice of executive federalism is an inevitable and necessary one, but that the mechanisms and procedures for the conduct of federal-provincial relations should be reformed to more adequately serve Canadian unity and democracy.

There are two general directions which reform of our own processes of intergovernmental relations could take. The first would be to institutionalize the current pattern of executive federalism in order to provide a framework for ongoing consultation, negotiation and decision-making. The new federal-provincial machinery would be placed under the authority of the conference of first ministers which would become a continuously functioning arm of government, formally recognized in the constitution, in which central and provincial policies would be coordinated, differences resolved and major Canada-wide priorities established. This option would be somewhat analogous to some aspects of the Australian Loans Council, an intergovernmental council provided for in the constitution as the result of a constitutional amendment, which has the power to make binding decisions over a limited range of matters.

This approach, however, would also institutionalize many of the defects of the present arrangements. It would lack the disciplinary features of the normal political process which permit the resolution of conflicts, including an ultimate appeal to the electorate; it would not provide any incentives for the cooperative attitudes which are essential to the effective working of executive federalism.

The second option, which we therefore prefer, would also accept the reality and value of executive federalism but would build it into the parliamentary institutions at the central level. In order to do this the present Senate would be replaced by a second chamber of the Canadian Parliament in the form of a council of representatives of the provincial governments.

#### **4. A new central second chamber**

Before concluding that a new second chamber would be the most appropriate instrument for improving the conduct of federal-provincial relations we have reviewed the functions which second chambers have performed in other federations and the different forms which a central second chamber may appropriately take. We have identified seven potential functions: (1) the critical review and improvement of central government legislation; (2) the conducting of investigatory studies; (3) the protection of minority rights; (4) the provision of broader regional representation for political parties and the correction of imbalances in the first chamber created by the electoral system; (5) the provision of a legislative house less dominated by the executive and party discipline; (6) representation of constituent provincial governments on a more equal basis than in the popular chamber, thereby increasing their influence over central legislation bearing directly on regional or provincial concerns; and (7) the promotion of central-provincial consultation on those particular areas which are of joint concern. Not all of these functions are equally important and some may be performed by other institutions if they are adequately structured for the purpose.

Among the possible options we have reviewed are: the Canadian Senate in its current form, an elected Senate, the House of the Federation proposed in the Constitutional Amendment Bill (1978), and a second chamber composed of provincial appointees. While the usefulness of the existing Senate has often been underestimated, its main value is confined to the first two of the seven functions listed above. Moreover, the appointment procedure has prevented it from being a genuine guardian of regional and sectional interests within central political institutions. Indeed, it could be said that few other



federations have made as little use as Canada of the central second chamber as a way of bringing regional or provincial interests to bear on central legislation.

An elected Senate would clearly enjoy much more popular support, be in keeping with the spirit of democracy, and create a centre of power that would not fall automatically within the control of the governing party. Elected second chambers have been successful in federations like the United States and Switzerland, where a system other than the responsible parliamentary cabinet is in operation. But, as the Australian experience indicates, an elected Senate can create serious problems in a parliamentary system like our own when there is a conflict between the popular mandate of that body and of the House of Commons to which the cabinet is responsible. Furthermore, party discipline rather than regional concerns are likely to be the dominant factor in deliberations.

The proposal in the Constitutional Amendment Bill (1978) for a House of the Federation composed equally of members selected by the House of Commons and the provincial legislative assemblies in proportion to the popular votes in elections is a novel one and we have considered it carefully. Such a house would certainly widen the regional representation of the major political parties in Ottawa and would have the superficial advantage of balancing central and provincial appointees. It suffers, however, from two critical drawbacks. First, the only accountability of its members would be to the appointing bodies which in effect would be the central and provincial parties; party interest rather than regional ones are therefore likely to predominate. Second, since its members could not speak for provincial governments, it would be unable to play an active constructive role in intergovernmental relations.

The fourth alternative for the second chamber is one composed of provincial delegations appointed by the provincial governments. We have concluded in favour of such an institution, suggesting the name Council of the Federation, because it could combine the function of a second legislative chamber in which provincial interests are brought to bear, and a means of institutionalizing the processes of executive federalism (with their confederal character) within the parliamentary process. Our conclusion is similar to the proposals advanced by the government of British Columbia, the Ontario Advisory Committee on Confederation, and the constitutional committees of the Canadian Bar Association and the Canada West Foundation.

### **5. The Council of the Federation**

In the place of the existing Senate we propose that there be established a Council of the Federation composed of provincial delegations to whom provincial governments could issue instructions, each delegation being headed by a person of ministerial rank or on occasion by the premier.

The Council would be composed of no more than 60 voting members with provincial representation roughly in accordance with their respective populations but weighted to favour smaller provinces. Membership for any one province would be limited to a maximum of one-fifth of the seats, and a minimum of one-fifth would be guaranteed to any province which has at any time has 25 per cent of the population (such as Quebec and Ontario).

Such a formula might produce a representation along the lines of 12 seats each for Ontario and Quebec, 8 for British Columbia, 6 for Alberta, 2 for Prince Edward Island and 4 for each of the other provinces. Upon becoming full-fledged provinces the territories would qualify for seats also.

We would propose that in addition, central government cabinet ministers be non-voting members so that they have the right to present and defend central government proposals before the house and its committees. At first sight the suggestion that central government ministers not have a vote may seem to run counter to the function we advocate for this Council as a way of integrating executive federalism into the parliamentary institutions. But since the initiating power for ordinary legislation before the Council would rest with the central government, voting within the Council would simply signify provincial ratification or rejection of central proposals concerning matters of provincial concern or of agreements already negotiated. In such a context a voting central government delegation would be anomalous.

Against the concern that such a Council might become a house of provincial obstruction we would suggest that the requirement of a two-thirds vote in the Council on those subjects of high provincial concern would reduce the premium for intransigence from that created at present by the unanimity rule in the first ministers' conference. Moreover, the open meetings would require provincial positions which would stand public scrutiny. A particular encouragement to accommodation would be the fact that the suspensive character of the veto in most subject areas would provide the central government, on the one hand, with an incentive to present proposals that would not be susceptible to delay and the provincial government delegates, on the other, with an inducement to agree upon modifications that would not provoke subsequent action to override them. We would expect that much of the preparatory work for the meetings of the Council would be done through its committees.

We would envisage differing requirements of majorities within the Council and of suspensive veto time for different categories of legislation. Matters within the exclusive central jurisdiction would not require the approval of the Council. Matters falling under concurrent jurisdiction but with central paramountcy would be subject to a suspensive veto of relatively short duration by the Council, but those falling under areas of concurrent jurisdiction where there is provincial paramountcy or in areas where central legislative authority combined with provincial administrative responsibility is specified in the constitution would be subject to suspensive veto by the Council of longer duration. The ratification of treaties dealing with matters within provincial jurisdiction, the exercise of the central spending power in areas of provincial jurisdiction, and the ratification of a proclamation of a state of emergency, would require special approval by the Council as set forth in our summary of recommendations in Chapter 9. Federal appointments to the Supreme Court and certain specified major regulatory agencies such as the Canadian Transport Commission and the National Energy Board would require approval of the appropriate committee of the Council. To determine the classification of a bill and hence the powers that the Council may exercise we suggest that there be provision for a permanent committee composed of the Speakers and some members from both the House of Commons and the Council.

All this would be a radical departure, one that would end the traditional roles of the Senate as a chamber of "sober second thought" on Commons' legislation and as an investigatory body on various issues. These roles we would transfer to a strengthened committee structure in the Commons. Unlike the existing Senate, the Council of the Federation, whose structure, powers and functioning we have here only sketched out, would be an institution which could play a major part in ensuring that the views of provincial governments are taken into account before any central action which might have an impact upon areas of legitimate provincial concern occurs, thus inducing more harmonious federal-provincial relations.

### **6. Additional mechanisms for improved federal-provincial relations**

Our proposal for a Council of the Federation as a second chamber of Parliament does not mean that the necessity for intergovernmental meetings and conferences will evaporate. To improve their effectiveness we propose that the conference of first ministers be put on a regular annual basis and that additional conferences be held whenever a government secures the agreement of a simple majority of the other ten. Furthermore, to establish agendas, to co-ordinate preparatory research and the development of proposals, and to follow through on the implementation of agreements resulting from such conferences, we suggest that there be a committee on policy issues made up of the eleven ministers responsible for intergovernmental affairs.

Because of the chronic possibility in any federation of overlaps in governmental policies, we further recommend that a standing task force of officials and experts representing all governments be established to review policy and program duplication on a continuing basis.

To bring federal-provincial relations more effectively within the scope of accountability to the legislatures, we recommend that standing committees be established in the House of Commons and in all the provincial legislatures to review the activities of the major federal-provincial conferences and the agreements arrived at by the central and provincial governments.

What we are seeking is a way to make the federal-provincial interdependence which is inevitable in a modern federation work more smoothly and effectively and to reduce the tensions that have arisen because both orders of government have tended to act on their own and without due regard for the other.

## **The Supreme Court and the judicial system**

It is the Supreme Court of Canada which must finally decide whether central and provincial laws are valid, must rule in cases of conflict between them, and must guard the constitutional distribution of powers. As such it has a crucial role in the evolution of Canadian federalism and must be and appear to be independent of both orders of government.

Yet at the present time the existence of this highest court in the land is based upon a simple statute of 1875 which Parliament could change at will. Furthermore, its justices are appointed by the central government alone.



While the Supreme Court has in fact displayed a high degree of independence in reaching its judgements, we believe that the time has come to make the public perception of that independence clear by entrenching within a revised constitution the existence and independence of the Supreme Court and indeed of our entire judicial structure. In view of our recommendation, later in this chapter, that fundamental rights be entrenched in the constitution, the importance of ensuring the actual and apparent independence of the courts and particularly the Supreme Court takes on added significance.

### **1. The jurisdiction of the Supreme Court**

The present Supreme Court has very broad authority, exercising appellate jurisdiction in all types of cases both constitutional and non-constitutional and in relation to the interpretation of both central and provincial statutes.

In considering the jurisdiction of the Supreme Court there are then two basic issues. First, should the Court be a specialized constitutional court with jurisdiction limited to cases involving constitutional issues? Second, should the Supreme Court's appellate jurisdiction be limited to cases involving the interpretation of central statutes, with provincial superior courts exercising final appellate jurisdiction in cases relating to the interpretation of provincial statutes? A relevant factor in the consideration of these issues is the dualistic character of the Canadian legal system within which there is a civil law system in Quebec and a common law system in the other nine provinces.

While a specialized constitutional court on the European model, such as that which exists in the Federal Republic of Germany, is a workable approach, we have concluded instead in favour of a Supreme Court with general appellate jurisdiction over cases involving both constitutional and non-constitutional issues because of the inevitable difficulty in many cases of separating constitutional and non-constitutional issues, and the desirability of a court whose judges see the full scope of the law in interpreting cases.

Because references to the Court by a government on a point of law are a useful and expeditious way of having constitutional issues settled, while avoiding lengthy and costly litigations, we have concluded that the Supreme Court retain this jurisdiction, but provincial governments should have the same rights as the central government to refer constitutional matters to the Supreme Court.

Proponents of the view that Supreme Court jurisdiction should be limited to central statutes only have argued that a provincial superior court is better able to interpret provincial statutes because of its greater sensitivity to the needs of the provincial community, and that this is particularly applicable to Quebec with its unique system of civil law. Indeed, many Quebec lawyers have argued that Quebec's civil law should be interpreted by judges trained in a civil law system rather than by a Supreme Court of Canada with only a minority of such judges. It has also been suggested that such an arrangement would reduce the number of Quebec judges on the Supreme Court since it would not need to be able to deal effectively with civil law cases.

We believe, however, that there is an advantage in having one federal appeal court interpreting all legislation and that it is important for Quebec to participate as fully in all



federal institutions as the other provinces. We attach particular importance to the symbolic role of the Supreme Court as a common court of appeal for all of Canada. This will require in our view the structuring of the Supreme Court of Canada in such a way as to recognize fully the duality of the Canadian legal system which it is interpreting as well as the wider political duality within Canada.

To make the Supreme Court, as a general court of appeal, more easily accessible to all Canadians, we propose that a special fund be established for the reimbursement of the travelling costs of the people involved in the cases before it, whenever the Court is of the opinion that the situation warrants it.

### **2. The composition and structure of the Supreme Court**

Assuming that the Supreme Court of Canada would in a revised constitution be given such a broad appellate jurisdiction over cases involving both constitutional and non-constitutional issues and over both central and provincial statutes, including those of Quebec, we propose a slightly enlarged court of eleven judges, five of whom would be chosen from among civil law judges and lawyers, and six from among common law judges and lawyers on a broadly regional basis. To facilitate its operation the Court might be divided into three benches: one of provincial jurisdiction with a Quebec law section composed of the civil law judges and a common law section composed of common law judges; one of federal jurisdiction with a quorum of seven or nine judges; and one of constitutional jurisdiction composed of the full court.

We have proposed this near-equality of representation and internal structure of benches both because of the two basic legal systems within Canada and because of the wider political duality within Canada. We attach great importance to the crucial need to have Quebec look upon the Supreme Court as a bastion for the protection of that province's responsibilities for a distinct heritage. If we are to accept the element of dualism within Canada, this is one place in our constitutional structure to give it fundamental recognition. We have emphasized throughout our report the need to give expression within a restructured federalism to the elements of duality and regionalism; our proposals for the Council of Federation provide a particular vehicle for the latter against which we balance an emphasis in the direction of duality within the Supreme Court.

### **3. The appointment of Supreme Court judges**

To ensure the visible independence of the Supreme Court of Canada as an impartial umpire in the federal system, we would recommend a change from the existing system of appointments to the Court by the governor general on the unilateral recommendation of the central cabinet. We would recommend that the central government before making nominations be required to consult the Quebec attorney general about the choice of civil law judges and the attorneys general of all the other provinces with respect to the choice of common law judges. To ensure that effective prior consultation has taken place we would recommend that all appointments to the Supreme Court be ratified by the appropriate committee of the Council of the Federation which we have proposed.

In the case of the appointment of the chief justice, we suggest that he be chosen from among the members of the Court. Since his original appointment as a judge will have

already required the provincial consultation process, we do not believe a repetition of such consultation would be necessary. Appointment, therefore, would be by governor in council for a non-renewable term and the post should be held in alternation by a common law judge and a civil law judge. The provision that appointment as chief justice be non-renewable would ensure a regular alternation and a sharing of duties.

As a further assurance of the independence of the Supreme Court, we suggest that the constitution specify that removal from office be only by the governor in council following a joint address from both houses of Parliament.

#### **4. Appointment of provincial higher court judges**

The current practice under section 96 of the BNA Act whereby judges to higher provincial courts are appointed by the governor general on the advice of the central cabinet is a questionable remnant of federal centralization. We suggest that consideration be given to a procedure whereby all provincial judges would be appointed by the provincial governments, but in the case of higher court judges only after consultation with the central government, since they interpret central laws as well. Federal Court judges would, of course, continue to be appointed by the central government.

### **Constitutional change and adaptation**

The need over time for amendments in the institutional structure of government to meet changing social, economic and political conditions arises in all political systems. It is, however, of particular significance in federal systems because of the impact of changes upon the relative powers of the central and provincial governments.

#### **1. The balance between constitutional flexibility and rigidity**

Within a federal system there are inevitably conflicting demands for flexibility and rigidity. On the one hand, the constitution must be made adaptable to changing needs and circumstances. On the other hand, the very regionalism which makes a federal system necessary encourages the demand for an amendment process sufficiently rigid for the provincial governments to feel secure about the functions assigned to them. Given the dualism and regionalism which a revised Canadian constitution would be intended to preserve, it will be important to ensure that the amendment and adaptation of the constitution should be neither so difficult as to produce frustration nor so easy as to weaken seriously the safeguards the constitution provides.

Furthermore, if neither order of government is to be placed in a subordinate position to the other, then the ultimate control of amendment over those aspects of the constitution affecting both central and provincial governments cannot be left to unilateral action by one order but must require a process involving both orders of government.

Formal constitutional amendment is not, of course, the only method of altering the federal framework. Judicial review, customs and conventions, and federal-provincial agreements are important means of change through which the constitution can evolve. Indeed, Canada throughout its history has relied heavily on these other means of adaptation.

### 2. Formal constitutional amendment

Provincial legislatures have been able to amend their own constitutions, except for the office of lieutenant governor, since 1867, and Parliament has been able since 1949 to amend unilaterally those portions of the BNA Act which concern only Parliament and do not concern the provinces. But although since 1927 a series of major federal-provincial conferences have sought to reach agreement on an amending formula for those portions of the constitution concerning both the central and provincial governments, as yet no agreement has been reached. We believe that it is important to contain within a revised federal constitution an amendment formula for those matters of joint concern to both orders of government, and that such a formula should attempt to strike a balance between the need for both flexibility and rigidity. Furthermore, we believe that the amendment procedure should be exclusively Canadian and not require enactment elsewhere.

There are two distinct elements in an amendment formula: a definition of the subject matters that will require both a central and a regional consensus; and the definition of that consensus itself.

With respect to the first, we suggest that the following parts of the constitution require a special amendment procedure involving both orders of government: the distribution of legislative powers, the basic features of both houses of Parliament, the existence and composition of the Supreme Court of Canada and the method of appointment and removal of its judges, the offices of governor general and lieutenant governor, a list of fundamental rights and liberties, the designation of official languages and related linguistic rights, and the constitutional amendment formula itself.

With respect to the definition of the consensus, various proposals have been made over the years. All would involve approval by both houses of Parliament, but the proposals vary according to whether ratification would be by provincial legislatures or governments or by a referendum process, and also in terms of the extent of provincial or regional approval to be required.

Among the best-known proposals for ratification by provincial legislatures or governments are the Fulton-Favreau formula of 1964 which in some areas would have required the consent of each province; and the Victoria Charter formula of 1971 which would have required approval by a majority of the provincial legislatures including among them provinces having more than 25 per cent of the population (Ontario and Quebec at this time), two of the four Atlantic provinces and two of the four western provinces (provided they made up together half of the population of that region). More recently the Committee on the Constitution of the Canadian Bar Association has proposed a modified version of the Victoria formula whereby in the western region approval would be required by at least two of the four western provinces including at least one of Alberta or British Columbia. The governments of Alberta and British Columbia have both requested that their provinces be given a right to a veto over constitutional amendments.

We are concerned that all these proposals would introduce a very high degree of rigidity, making subsequent agreement on constitutional amendments difficult to achieve. At the same time we recognize that the need to reassure the major regions and the larger



provinces that their distinctive interests will not be overridden makes some such formula necessary if ratification is to be by provincial legislatures.

We have also considered the possibility of a referendum process for the ratification of constitutional amendments, a procedure which is followed in both the Swiss and Australian federations. But the provincial governments, through their membership in the new second chamber which we have proposed, will have direct participation in the approval of constitutional amendments and even the right to initiate them. We have concluded, therefore, that a ratification process involving a mandatory referendum would be more appropriate than ratification by provincial legislatures. Such a proposal has the further advantage of involving citizens at large in a matter as important as constitutional amendment.

Our proposal for the approval of constitutional amendments of concern to both orders of government then would be passage in the House of Commons and in the Council of the Federation, in each case by a simple majority of votes, plus ratification by a Canada-wide referendum with a majority vote in favour in each of four regions consisting of the Atlantic provinces, Quebec, Ontario, and the western provinces. We have given some consideration to the question whether for this purpose British Columbia should be considered as a fifth region, but on balance have concluded that, because of the relative size of its population, its interests would be safeguarded by the proportion of its votes within a region of four western provinces.

### 3. Delegation of powers

While various forms of delegation of administrative powers between the central and provincial governments are permitted, the courts have held that the BNA Act does not authorize the delegation of legislative powers from one order of government to the other. Generally, with the notable exception of the Fulton-Favreau proposals, there has been a reluctance to envisage the delegation of legislative powers. We are of the view that this reluctance is based upon exaggerated fears that massive delegation would occur, upsetting the constitutional balance, and that a provision enabling the delegation of legislative powers, provided it were accompanied by appropriate safeguards, would be a useful device not only to achieve greater flexibility but to enable the distinctive requirements of various provinces (in particular Quebec) to be met without having to apply those arrangements to all provinces.

We therefore propose that a new constitution recognize the right of the central and provincial governments to delegate to each other, by mutual consent, any legislative powers on condition that such delegations be subject to periodic revision and be accompanied where appropriate by fiscal compensation.

## Electoral reform and the House of Commons

The effective and harmonious operation of any federal system depends very much upon the degree to which the central institutions are considered in their operation to be fully representative of the major groups within the federation.



Our research of experience in other federations indicates that when party membership in the central parliament becomes concentrated in regional blocks it is an advance signal of eventual disintegration. The regional polarization of federal political parties corrodes federal unity. Because we see developing signs of such a situation in Canada we have come to the conclusion that electoral reform is urgent and of very high priority.

The simple fact is that our elections produce a distorted image of the country, making provinces appear more unanimous in their support of one federal party or another than they really are. Quebec, for instance, has for years given an overwhelming proportion of its Commons seats to Liberals: in the 1974 federal election, that party won 81 per cent of the seats though it got only 54 per cent of the popular vote. In the same election the Progressive Conservatives gained the second highest popular support while, with less total support across the province, the Social Credit Party won four times as many seats. In the elections of 1972 and 1974 two Alberta voters out of five favoured other parties but every elected member was a Progressive Conservative. Nor are these examples exceptional. Under our current electoral system, which gives the leading party in popular votes a disproportionate share of parliamentary seats in a province, the regional concentration in the representation of political parties is sharply accentuated. This makes it more difficult for a party's representation in the House of Commons to be broadly representative of all the major regions.

In a country as diverse as Canada, this sort of situation leads to a sense of alienation and exclusion from power. Westerners in particular increasingly resent a disproportionate number of Quebec members in a Liberal caucus which has very few of their own. If there were more Quebec members in the Progressive Conservative caucus representing more accurately the popular vote in that province, that caucus would be in a better position to reflect and understand the concerns of Quebecers.

### **1. Toward better electoral representation**

To correct the existing situation with its corrosive effect on Canadian unity, we propose a major change in the electoral system. We would continue the current simple-majority single-member constituency system because of the direct links it establishes between the voter and his MP, but would add to it a degree of proportional representation. We would increase the overall number of Commons seats by about 60 and these additional seats would be awarded to candidates from ranked lists announced by the parties before the election, seats being awarded to parties on the basis of percentages of the popular vote. We have opted for these additional seats being assigned to those on party lists announced before an election rather than to candidates who have run and placed second in individual constituencies in order to avoid any connotation that these additional members are second-class representatives and to encourage parties to use this means to attract candidates who might otherwise be difficult to entice into politics.

We have examined in some detail various ways in which this could be done, although we would prefer to leave the final choice in this matter to Parliament in consultation with experts. One method would base the allocation of the 60 seats on the basis of the vote in each province won by a party, the additional seats being awarded to those parties which otherwise would be proportionately under-represented. Another method would be to

allocate the 60 seats on the percentage of the country-wide vote received by each party and apply what is known as the d'Hondt formula for allocating seats provincially among parties.

The procedure for allocating seats in the second method is more complex and difficult for electors to understand, but reduces the likelihood of minority governments resulting. Canadians have traditionally expressed a fear that a system of proportional representation would produce frequent minority governments and hence weak and unstable cabinets. An analysis of how our proposal might have worked in each federal election since 1945 suggests that the combined electoral system we are proposing, with about 280 single-member constituencies plus 60 additional seats to make representation more proportionate, would not only have produced a more broadly based representation within each party in the Commons but would not have significantly increased the incidence of minority governments over that period.

### **2. Enhancing the effectiveness of the House of Commons**

The enlargement of the House of Commons' membership which we have proposed would also open the way for committees to probe more deeply into government legislation. Hitherto, a major obstacle to strengthening the committee system in the Commons has been that members of Parliament have too little time and too little experience to take committee work seriously. Committee work is interrupted by regular sittings, and by constituency problems which require, rightly, a great deal of attention. The additional members without constituency responsibilities would provide additional manpower for House committees.

There are two basic reasons why we believe this would be an appropriate time to strengthen the committee structure of the House of Commons. The first is that the accountability of the cabinet to the House would be strengthened, at a time when many critics see the cabinet as becoming too dominant in the affairs of the House. The second is that the committees would be enabled to perform the useful roles previously played by the Senate in critically reviewing and improving legislation and in conducting investigatory studies, since the new second chamber we are proposing will be less suited to these particular tasks (although better suited to perform others).

We would hope that the improved representativeness of the political parties in the House of Commons and the enhancement of the effectiveness of that House would contribute to Canadian unity by reducing the sense of alienation and powerlessness which many Canadians feel toward their central institutions.

### **Individual and collective rights**

There have been enough episodes in recent Canadian history to make us believe that some basic rights should be protected by the constitution. The removal and internment during the Second World War of British Columbia's population of Japanese origin, many of them natives and citizens of Canada, the October 1970 crisis in Quebec, and the recently revealed illegal activities of our security forces, not to mention the general pervasive

growth in the power of governments, lead to doubts in many minds about the security of citizens' rights. There is a vital link between the protection of basic rights and Canadian unity, for only if Canadians feel individually and collectively confident of their rights can we expect them to display a positive attitude to change and accommodation.

The question of human rights in Canada has been extensively explored by such organizations as the Canadian Bar Association, the Joint Committee of Parliament reviewing the Constitutional Amendment Bill (1978), and a number of provincial reports. The Task Force's main concern, therefore, has been to examine the issue of the protection of rights in a general rather than a detailed way in relation to the context of major constitutional reform.

Rights may be grouped into three relatively distinct categories. One category covers individual rights which are almost universally considered fundamental by free peoples everywhere: political liberties such as the right to free speech and association, legal rights such as the right to security and to a fair hearing, egalitarian liberties such as the right to non-discrimination, and economic liberties such as the right to property and the right to employment. A second category embraces rights people have as individuals only because they belong to a particular group, an example being the school rights specified in the BNA Act for confessional groups. They are collective rights in the sense that for the individual to exercise them meaningfully the context of the group is necessary. A third category covers collective rights which only a group and not individuals can exercise, an example being the right of a union to bargain.

The importance of collective rights, particularly language rights, was often invoked in our hearings, not only as a way of safeguarding within Quebec its way of life, but also by French-speaking Canadians outside Quebec, by the English-speaking minority in Quebec, and by native and ethnic groups.

In the final analysis, the best protection for any right is an alert public opinion and a responsive democratic government. There are basically five forms of protection for rights: (1) the precedents affirmed by the common law as declared by the courts; (2) simple acts or statutes passed by our legislatures; (3) a charter of human rights collected in a single statute (of which the Canadian Bill of Rights of 1960 is an example); (4) embodiment in a portion of the constitution so that all government legislation must take them into account; and (5) embodiment in a portion of the constitution which is entrenched—that is, requires a special approval procedure for any change.

### **1. The issue of constitutional entrenchment**

Many who spoke to the Task Force on the subject of fundamental rights were firmly convinced that the time has come for a number of basic rights to be entrenched in the constitution.

Because entrenchment in the constitution would place in the hands of the courts the authority to declare laws in conflict with those rights inoperative or invalid, some have argued that entrenchment would undermine the tradition of parliamentary supremacy in Canada, and substitute for it judicial supremacy.

Against this view must be put what we saw and heard across the country: the growing concern of individuals at the pervasive impact of government on their lives, the energetic assertions of native peoples and ethnic groups, and the desire of Québécois for collective security and for assurances that the individual rights of French-speaking Canadians will be respected as much as those of English-speaking people. Furthermore, entrenchment would perform an educational and inspirational function by making Canadians more aware and more proud of the wide range of freedoms they do have. Above all, a sense of individual and collective confidence in the security of their rights would contribute to a positive attitude to Canadian unity.

Consequently, on balance, we have concluded that some key individual and collective rights should be entrenched in a new constitution. Indeed, it is in part because we do propose that some rights be entrenched, and because judicial decisions in constitutional matters are so important, that we have recommended changes to ensure the independence of the Supreme Court of Canada and to make it credible to all Canadians including those in Quebec.

### **2. What to entrench in the constitution**

In considering what to entrench in the constitution there are two aspects to consider. The first is to what extent the entrenched constitutional rights should apply to both central and provincial legislation, and the second is what specific rights should be so entrenched.

The existing Canadian Bill of Rights (1960) applies only to the legislation of Parliament, and the Bills of Rights passed by such provincial legislatures as Saskatchewan (1947) and Quebec (1975) can, of course, apply only to provincial legislation. But when fundamental rights are embodied in a federal constitution it is normal that they apply to both central and provincial legislation. In a federation it is reasonable to expect that fundamental individual rights should be similar in all parts of the country. It could not be imagined, for example, that a Canadian citizen might enjoy freedom of speech in Newfoundland but not in British Columbia. Nor would Canadians tolerate equal opportunities for women in Manitoba but not in Ontario. Fundamental rights should therefore be embodied in the constitution in a way that assures the same basic guarantees to all citizens of the land.

But because of the difficulty of getting the central and provincial governments to agree, one of three possible strategies is required to determine what fundamental rights applying to both federal and provincial legislatures should be embodied in the constitution. The first is that suggested in the Constitutional Amendment Bill (1978) by which the fundamental rights specified in the constitution would at first apply only to central legislation, and subsequently in provinces as they individually opt in by adopting those provisions as a set. Only after all the provinces had opted in would that portion of the constitution be entrenched.

A second approach, intended to encourage early agreement by all the provinces to a set of rights entrenched in the constitution, is to weaken the force of those rights by qualifying them. This would involve including a clause in the constitution which would permit a legislature to circumvent a right (and incurring the odium of doing so), by expressly excepting the statute from respecting that right. Such a clause in a constitution is sometimes described as an exculpatory clause.



The third approach is simply to limit the set of entrenched rights applying to both orders of government to those on which both central and provincial governments can agree now, adding other rights later when agreement is reached.

Each of these approaches has its advantages and disadvantages. We would strongly favour the third approach wherever agreement can be readily reached. This might be supplemented if necessary by use of the second approach, for any additional rights on which a federal-provincial consensus on entrenchment in the constitution would be precluded unless there was included such a provision enabling specific circumventing of the right within a statute.

As to the actual rights to be entrenched we suggest that the Bill of Rights entrenched in the constitution should contain individual political, legal, economic and egalitarian rights, including those suggested in chapters 5 and 9 of this report.

On the question of language rights, we believe those rights listed in chapters 5 and 9 of this report should also be entrenched. Similarly, the unanimous agreement in principle by the premiers at their Montreal meeting in 1978 concerning the entitlement of each child of a French or English-speaking minority to education in his or her own language in each province wherever numbers warrant should also be entrenched in the constitution.

Finally, in the form of collective rights for the native peoples, there should be entrenched in the constitution a section enabling Parliament and the provincial legislatures to adopt special measures to benefit individual native people.

### The integrated approach to a restructured federalism

Our scheme for a restructured federation represents a radical modification to the existing federal system, but we believe that these major changes are necessary if a sense of Canadian unity is to be maintained and developed in the years ahead. Our recommendations concerning the distribution of powers, the conduct of federal-provincial relations and the Council of the Federation, the Supreme Court of Canada, means of constitutional adaptation and change, the electoral system and the House of Commons, and entrenched fundamental rights represent an integrated set of proposals linked to each other in such a way that the modifications suggested in one section are related to those suggested in another.

We would hope that this set of proposals for constitutional and political reform would encourage and induce more harmonious relationships within the Canadian federation. No constitutional or political solution will solve all problems for all time; like the preservation of liberty, unity within a political framework of divided power requires continued effort. Nevertheless, it is our conviction that the continued unity of Canada requires a substantially restructured federalism that fully recognizes the dualistic and regional character of diversity within the country and provides a focus for all Canadians in an effective common government which facilitates the sharing of power and benefits among them.









### **Change in a democratic society**

Let us, in concluding, return to the beginning. It was Quebec and Quebec's relations with the rest of Canada that brought us together as Commissioners of the Task Force on Canadian Unity in the first place, and set us on the extraordinary journey which is only now drawing to a close. It is our belief that the country has been given an opportunity, if its citizens, within Quebec and elsewhere, have the imagination to seize it. There are profound changes under way in Canadian society and the difficulties of adjustment will be considerable; but the changes carry with them the promise of a future in which the country and its people will come fully into their own, seasoned by the years of trial and matured by challenges conquered. It is frequently out of such periods of torment and crisis as this that stronger countries are constructed.

We wish, however, to underline one thing unequivocally: if it turns out to be the clearly expressed and settled preference of Quebecers to assume a sovereign destiny, none of us on the Task Force would wish to see their right to do so denied. Because the question of Quebec's right to settle upon its own destiny is so critical in determining the outcome of Canada's crisis, we find ourselves compelled at this point in the report to speak as frankly as we can about the principle of self-determination.

The specific question which we intend to address here is the following: Does Quebec possess the right of self-determination? It is evident that in a technical sense, the departure of Quebec from the Canadian Confederation would require an amendment to the BNA Act for it to have legal validity. In responding to the more general, political sense of the question, scholars and students disagree; some say that the case of Quebec meets the requirements necessary to lodge such a claim under international law, while others deny it.

There is however, one thing about which virtually all agree, namely, that so far as self-determination is concerned, principles and rights are usually subordinate to political events and to the hard facts of success or failure. People who succeed in establishing themselves as distinct political communities will generally secure appropriate international recognition in due course; people who fail will find little succour or comfort in the knowledge that their claim was deemed to be a valid one in international law.

We believe that this practical consideration carries us to the heart of the issue, for in our judgement it is not a question of deciding in the abstract whether Quebec possesses a right of self-determination, but rather determining in the most practical manner possible what principles ought to govern Quebec's discussions with the rest of Canada as it faces the largest political decision it has had to make in the last century. If, in the course of the next few years, Quebecers decided, definitively and democratically, to secede, ought that decision to be respected and accepted by the rest of Canada?

To that question we answer an unequivocal yes. Our response is a virtual corollary of our acceptance of the democratic process. Given a community of the size and character of Quebec society, we believe that the clearly expressed will of the population must prevail,

and that it would be both unwise and ethically questionable to deny or thwart it. Practically speaking, this means the renunciation of the use of force to maintain the integrity of the Canadian state and a commitment to seek to construct political institutions which reflect the will and aspirations of the citizens concerned. We believe most Canadians and virtually all of the country's political leaders would share our view.

Canada's current political situation encourages, indeed requires, sober reflection upon such matters, Quebecers are soon to take a critical second step in the decision-making process that will lead eventually either to independence or to a fresh association with their fellow citizens within the framework of the Canadian political order. The first major step was the provincial election in November 1976, and the second is the provincial referendum on sovereignty-association which is likely to be held before the end of 1979.

On one point, however, we would insist: it is for the people of Quebec to declare themselves on their political and constitutional preferences, and not the country as a whole. We recognize that both the government of Quebec and the government of Canada, as a result of the democratic process, represent the people of Quebec in their respective spheres of jurisdiction; it is important, therefore, that whatever process is employed to determine the will of the people of Quebec is accepted as legitimate by both governments. But it is the Québécois themselves who must make the decision.

The point on the other side is also clear. The provinces and communities of English-speaking Canada have interests which must be respected and they have an equal right to determine what arrangements suit them best, should Quebec wish to secede. English-speaking Canada does not speak with one, but with many voices, so they are sometimes difficult to hear, but our study and consultation do not lead us to believe that sovereignty-association as advanced would have great appeal in the other nine provinces.

At this point we cannot but say that all this seems excessively cold-blooded and remote when what we have been speaking about in the last few pages is the possible collapse of our country. Very few countries dissolve themselves in an atmosphere of sweet reason; economic hardship, social turmoil and violence almost always accompany changes of this magnitude and, whatever their positive achievement, such changes commonly leave behind them a legacy of failed dreams and shattered hopes.

But despite the forbidding dangers that secession presents, it is not sufficient to build one's future on fear of the unknown. In saying this we believe we are at one with the citizens of this country, whether they live in Quebec or elsewhere in Canada. We discern a widespread frustration among our fellow citizens with the aimlessness and lack of common purpose that characterizes much of Canadian public life, and a strong desire to commit oneself to some projects and purposes that are held in common among large groups of citizens. We have unabashedly capitalized on that sentiment in this report. The Task Force on Canadian Unity is neither by its mandate nor by the inclinations of most of its members primarily an advisory body on constitutional issues. Although our analysis justifies, and our recommendations provide, a comprehensive set of constitutional changes, our purpose from the start has been to address the crisis of Canadian unity, not to devise a possible new constitution for Canada. We stress this because we believe that it will be easier to

change the constitution than it will be to create unity among Canadians. These two difficult tasks are both necessary, and they very frequently overlap, but they require somewhat different approaches.

Moreover, we also share the conviction that constitutional change that is not predicated on a careful reading of the current crisis could easily undermine rather than enhance Canadian unity. Consensus on constitutional patriation and amendment plus a limited number of matters unrelated to Canadian duality and regionalism would not, in our judgement, be a sufficient response to the constitutional implications of the present crisis.

So far as our own report is concerned, we do not believe that it is enough to have made numerous recommendations on numerous issues, leaving to the fates all consideration of how these, or indeed how any others, might be realized. The question of implementation is vital. Indeed, sometimes we have been tempted to think that the real issue in Canada is not so much what is to be done, but how we are to do it. For not only must difficult, sensitive, and complex matters be imaginatively dealt with over the next few years, but they will have to be dealt with in a time of acute tension and stress.

Our observations and recommendations fall into two categories. First, there are those recommendations designed to give shape and substance to the restructured federal system that we are proposing. Most of these would depend for their implementation on the established processes of bargaining and negotiation between representatives of both orders of government.

The second category includes recommendations and observations which are not concerned so much with the restructuring of Canadian federalism as with the spirit which should underlie it and the practices which would give it life and movement. The proposals in this category do not require formal intergovernmental agreement to be implemented. They relate on the one hand to the attitudes and behaviour of the various governments, and to the policies which they independently develop and administer, and on the other to the attitudes and behaviour of citizens and private organizations. Thus these proposals can be handled directly by the government, public agency or private organization concerned, or considered and attended to by citizens themselves.

### **The process of constitutional reform**

We would like to turn now to the broader question of change and implementation—namely, the process of constitutional reform. Constitutional change does not come easily or cheaply in Canada. The historical record compiled by the federal and provincial governments in their many attempts to achieve constitutional change reveals some successes but many failures. Why is this so?

We would suggest that Canada's efforts at reaching a comprehensive constitutional settlement have been bedevilled by two highly significant factors that have contributed in no small measure to the inability of our political leaders to reach broad agreement.

First, for several generations there has been a remarkably consistent and coherent constitutional point of view shared by a broad majority of French-speaking Québécois. This has served both to support and to limit the freedom of action of Quebec's political leaders. No Quebec politician can afford to stray far from this collective will; the most graphic example of the application of this rule occurred in 1971 when then Premier Bourassa was on the point of accepting the draft constitutional charter at Victoria, but repudiated it upon returning to a storm of opposition in Quebec.

The second significant factor which has rendered the achievement of constitutional reform difficult is the general apathy of English-speaking Canadians on the subject. This has left English-speaking Canada's political leaders with quite extensive freedom of action, but with little popular incentive or pressure to come to terms. The benefits to be derived from the achievement of constitutional reform have been modest, and the costs of failure slight. Given the diversity of English-speaking Canada and its provinces, it is little wonder that no coherent will has manifested itself.

Putting these two factors together, it is perhaps not surprising that Canada's recent efforts at constitutional reform have not yet borne fruit. Does this mean that Canada's traditional procedure for securing agreement on constitutional change, namely, federal-provincial negotiation, is inadequate to our current needs?

The more we considered the alternatives to federal-provincial bargaining and negotiation, the more we came to appreciate that any procedure would probably work—so long as the political will to make it work was present; there is no magic formula which yields finality, or leads directly to a new constitution for Canada.

We have concluded that the indigenous Canadian tradition of intergovernmental discussion has much to be said for it. If it does not involve the people of Canada directly, it nevertheless does employ the legitimately elected political representatives of the people. Beyond that, the governments of Canada and the provinces encompass neatly the main sources of conflict which have created the present crisis.

For these reasons, and despite the historical record, we are inclined to believe that it would be premature at this time for us to recommend a specific departure from the process of federal-provincial discussion on constitutional matters which has developed over the last decades, and which is currently in operation.

Nevertheless, there are alternatives, and should the intergovernmental discussions break down decisively the country may be driven to consider what other procedures are available.

One idea that has been advanced involves the creation of a "constitutional commission" which would be composed of some government representatives and some representatives elected directly by the people and which would work with strict terms of reference and a strict timetable to produce a draft constitutional document for disposition by the governments and people of Canada. This procedure would supplement or extend the traditional intergovernmental process, rather than supplant it.



Another procedure, which was suggested to the Task Force on several occasions, would supplant the existing process of constitutional discussion in federal-provincial conferences and replace it with a constituent assembly—that is to say, a fairly large, representative body of citizens which is convened with the authority to produce a new constitution to be approved or rejected directly by the people. Needless to say, there are complex problems with the composition, role, decision-making procedures and disposition of the product of such a constituent assembly. Indeed, there is a sense in which the very problems which a constituent assembly is designed to address have to be resolved before it is created, because the composition of such a body is crucial in determining the outcome of its work.

The Task Force does not believe that Canada is yet at the stage where such a radical by-passing of governmental authority must be considered. We take this position because our present situation does not warrant or permit so extreme a measure, because it is alien to our political traditions, and because we see little evidence that it would be more effective than any other method in securing for us a new or substantially revised constitution.

However, we recognize that those most actively involved in the discussion of Canada's future are frequently inclined to concentrate almost exclusively on the political arena—on the relations between the federal and provincial governments, on the policy intentions of the government of Quebec, on efforts at constitutional reform, and so forth. Yet these matters derive their significance from the community out of which they spring, and one could with some justice argue that it is the attitudes, preferences and state of mind of Canadian citizens that is the most important consideration of all in determining how the crisis in Canadian unity is to be resolved. The concept of a constituent assembly is illuminating here, because it is concerned not only with preparing a constitution, but also with constituting or re-constituting a "people," that is to say, with re-establishing a popular consensus or political community upon which a political order can then be built. It is a real question whether, in a democratic age, significant agreements struck between or among governments will endure in the absence of broad popular acceptance and support.

These reflections lead us to the following conclusion. While we support the continuation of federal-provincial conferences as the forum for constitutional discussion, we believe that there should be a popular ratification of the results, along the lines of our proposed constitutional amendment procedure. This would mean that, after an agreement on a new constitution arrived at by the federal and provincial governments, a Canada-wide referendum would be held, and approval of the new constitution or the set of constitutional amendments would require a majority vote in each of four regions of Canada—the Atlantic region, Quebec, Ontario and the western provinces. Thus, final responsibility for constitutional change would rest with the people themselves.

Some will argue that this simply imposes another block on constitutional progress, and makes it even more unlikely than it already seems to be that significant constitutional reform will be achieved by the normal processes of change. We do not think so, for we believe that one of the reasons for the difficulties constitutional reform has encountered has been the absence of popular interest in it, in English-speaking Canada in particular. Wide-ranging political agreement seems unlikely to be achieved without strong supporting

consensus among the people generally, and we believe that citizens who are asked to declare themselves directly on a proposal are more likely to interest themselves in it than those who are not.

This point may in fact be of broader application, for in a democratic age it is probably necessary, in order to establish the unity of a country, to secure some measure of concord among its citizens. The citizens, as well as their political leaders, must take responsibility for the welfare of their country and the vitality of their collective life.

### **A final note**

After months of study, analysis, discussion and at times, sharp disagreements, we, the Commissioners of the Task Force on Canadian Unity, are unanimous in our recommendations, and unanimous in our convictions that not only have we "come to terms" with the words of our debate, but more so, with ourselves. Looking back on our incredible journey in quest of a country, we have found faith in our collective will to walk together into our future.

We are not sure that our vision of Canada will meet the approval of all Canadians, but we have become convinced, over the months we have met as a task force, that our three principles of duality, regionalism and the sharing of benefits and power form the Canadian trilogy of our collective saga. But the very last words of this debate do not belong to us, they belong to you, our compatriots from the east and the west, from the north and the south. Now once again as we did, months ago, we are listening to all of you...







## Respecting Diversity

### Language (Chapter 5)

1. The principle of the equality of status, rights and privileges of the English and French languages for all purposes declared by the Parliament of Canada, within its sphere of jurisdiction, should be entrenched in the constitution.

These purposes should include:

- i – The equality of both official languages in the Parliament of Canada;
  - ii – the right of members of the public to obtain services from and communicate with the head offices of every department, agency or Crown corporation of the Government of Canada, the central administration in the National Capital Region, and all federal courts in Canada in either of the official languages. Elsewhere, members of the public should be able to obtain services from and communicate with the central administration in both official languages where there is significant demand, and to the extent that it is feasible to provide such services;
  - iii – the equality of both official languages as languages of work in the central administration in the National Capital Region, in all federal courts, and in the head offices of every department, agency or Crown corporation of the Government of Canada. Elsewhere, the usual language or languages of work in central institutions should be the language or languages of work normally used in the province in which the central institution is operating. This recommendation is subject to the previous recommendation concerning the languages of service;
  - iv – the right of any person to give evidence in the official language of his or her choice in any criminal matter;
  - v – the right of every person to have access to radio and television services in both the French and the English languages;
  - vi – the availability in both official languages of all printed material intended for general public use.
2. Each provincial legislature should have the right to determine an official language or official languages for that province, within its sphere of jurisdiction.
  3. Linguistic rights should be expressed in provincial statutes, which could include:
    - i – the entitlement recognized in the statement of the provincial first ministers at Montreal in February 1978: “Each child of a French-speaking or English-speaking minority is entitled to an education in his or her language in the primary or secondary schools in each province, wherever numbers warrant.” This right should also be accorded to children of either minority who change their province of residence.
    - ii – the right of every person to receive essential health and social services in his or her principal language, be it French or English, wherever numbers warrant.
    - iii – the right of an accused in a criminal trial to be tried in his or her principal language, be it French or English, wherever it is feasible.

4. Should all provinces agree on these or any other linguistic rights, these rights should then be entrenched in the constitution.
5. The provinces should review existing methods and procedures for the teaching and learning of both French and English and make greater efforts to improve the availability and quality of instruction in these languages at all levels of education.

### **The First Canadians (Chapter 5)**

6. Sections 11 and 12 of the Indian Act should be amended in order that Indian men and women acquire and lose Indian status in exactly the same way.
7. The central government should make greater efforts to promote and protect native languages and cultures, and should more actively facilitate communications between Canada's native peoples and the indigenous people of other countries.
8.
  - i – Both central and provincial authorities should pursue direct discussions with representatives of Canadian Indians, Inuit and Métis, with a view to arriving at mutually acceptable constitutional provisions that would secure the rightful place of native peoples in Canadian society.
  - ii – Further, both the central and provincial governments should meet to settle their respective areas of constitutional responsibility in the provision of essential services in the fields of health, social welfare, housing and education to status and non-status Indians, to Inuit, and to Métis on reserves, Crown lands, rural centres and large cities.
9. Both the central and provincial governments, and major voluntary and philanthropic associations, should provide increased funding to native peoples to assist them to undertake research and publish histories of their tribes and communities.
10. Both the public and private sector should make greater efforts to see that native peoples are more adequately represented on boards and commissions, task forces and study groups.

### **Culture (Chapter 5)**

11. The provinces should:
  - i – take the primary role in supporting local and regional cultural and artistic development, particularly by encouraging the participation of the people generally in cultural activities, and by the establishment where they do not exist of provincial arts councils to assist in this process.
  - ii – recognize and take more fully into account the impact which their many non-cultural policies and programs have on the cultural development of their societies.
12. The provinces should recognize that education has a Canada-wide dimension by giving greater prominence to Canadian studies, and they should, through a strengthened Council of Ministers of Education, develop ways by which this dimension may be represented more fully in our school systems.

13. The central government and its cultural agencies should concentrate on developing programs of a Canada-wide dimension; they should not seek to enter into domains and pursuits which the provinces can and should perform for themselves.
14. The number of Canada-wide artistic prizes, competitions and cultural activities should be increased for the young people of the country.
15. The public and private sectors of Canada should work in cooperation to increase those youth exchange programs which have demonstrated their capacity to enhance inter-regional and inter-cultural knowledge among the young people. Also, efforts should be made to extend similar programs to adults.
16. The central government should, in cooperation with the private sector, do its utmost to increase opportunities for low-cost travel in order to enable Canadians who wish to do so to become better acquainted with their country and their fellow-citizens.
17. Steps should be taken to ensure that the products of our varied cultural activities (such as books, recordings, magazines, films and paintings) are more imaginatively and effectively distributed, diffused, or marketed throughout Canada, and in a way that would give them prominence in relation to those from non-Canadian sources.
18. The tax system should be employed more directly in support of the cultural and linguistic development of the country, and consideration should be given to increasing cost allowances and tax write-offs for cultural enterprises.
19.
  - i – The provincial governments should assume the primary responsibility for the support of multiculturalism in Canada, including the funding of ethno-cultural organizations.
  - ii – The major ethno-cultural organizations in Canada should attempt to work more closely with the provincial governments to develop ways in which multiculturalism can find most effective expression through provincial initiatives.
  - iii – Both the public and the private sectors should make efforts to reflect in their institutions more adequately the cultural diversity of Canada.

## Unity and the health of the economy

### General (Chapter 6)

20. Section 121 of the BNA Act should be clarified in order to guarantee more effectively free trade between the provinces for all produce and manufactured goods, and be extended to include services.
21. In addition, government purchasing policies should be based upon considerations of market costs unless specified social and economic objectives would otherwise be served.

22. Impediments to the mobility of persons in the professions, trades and other such occupations should be reduced through the application of widely accepted common standards; and such standards should be set and reviewed periodically by the provincial governments and the appropriate professional bodies in consultation with each other.
23. The constitution should make clear the prohibition of barriers to the interprovincial movement of capital.
24. The annual conference of finance ministers should be used more actively to ensure the coordination of economic stabilization policies, by providing a common assessment of the economy and a better knowledge of the total revenues expenditures and borrowings of the Canadian public sector as a whole.
25. Meetings between the central and provincial governments, and representatives from the private sector should be regularized and integrated under the general supervision of conferences of the first ministers on the economy, to be held every two or three years, with a view to framing and coordinating policies designed to achieve medium and longer-term objectives for the Canadian economy and for its main sectors of activities.
26. With respect to the sharing of Canadian wealth:
  - i – the constitution should recognize and entrench the principle of equalizing social and economic opportunities between regions as an objective of the federation, and it should be the responsibility of the central government to maintain a system of equalization payments.
  - ii – a program of provincial revenue equalization along the lines of current arrangements should be maintained.
  - iii – for the purpose of better balancing provincial resources with the developmental requirements of their economies a new type of equalization program should be developed.

## A restructured federalism

### General (Chapter 7)

27.
  - i – There should be a new and distinctive Canadian constitution to meet the present and future needs of all the people of Canada.
  - ii – The new constitution should be in the English and French languages, and both texts should be official.



28. The preamble to the constitution should include a declaration that the people of Canada
- i – maintain and reinforce their attachment to democratic institutions, federalism, human rights and the principle of supremacy of the law;
  - ii – recognize the historic partnership between English and French-speaking Canadians, and the distinctiveness of Quebec;
  - iii – affirm the special place of the native peoples of Canada;
  - iv – recognize the richness of the contribution of Canada's other cultural groups;
  - v – recognize the diversity among Canada's regions and the need to permit all regional communities to flourish;
  - vi – seek the promotion of the social, economic and cultural development and the equality of opportunity for all Canadians in all regions of Canada.
29. A new constitution should recognize two major principles with respect to distribution of powers and to central institutions:
- i – the equality of status of the central and the provincial orders of government;
  - ii – the distinctive character of individual provinces.

### **Distribution of legislative and executive powers (Chapter 7)**

30. The present distribution of legislative and executive powers should be clarified and adjusted to contemporary needs and realities.
31. The principal roles and responsibilities of the central government should be:
- i – the strengthening of Canadian identity;
  - ii – the preservation and enhancement of the integrity of the Canadian state;
  - iii – the overriding responsibility for the conduct of international relations;
  - iv – the management of Canada-wide economic policy (including monetary policy) and participation in the stimulation of regional economic activity;
  - v – the establishment of Canada-wide standards, where appropriate; and
  - vi – the redistribution of income.
32. The principal roles and responsibilities of the provincial governments should be:
- i – the social and cultural well-being and development of their communities;
  - ii – provincial economic development, including the exploitation of their natural resources;
  - iii – property and civil rights; and
  - iv – the management of their territory.
33. In addition to roles and responsibilities defined in the previous recommendation, an essential role and responsibility of the government of Quebec should be the preservation and strengthening of the French heritage in its own territory.

34. A new distribution of powers should, whenever it is desirable or needed in order to fulfil the objectives of dualism and regionalism, recognize the distinctive status of any province or make it possible for a province to acquire such status.
35.
  - i – In a new distribution, the powers allocated to all provincial legislatures should provide the framework which makes it possible for Quebec to fulfil its additional role and responsibility with respect to the French heritage in its own territory.
  - ii – In the distribution of powers, provision should be made for the possibility that some provincial governments other than Quebec may wish to assume, now or in the future, some or all of the powers in the cultural domain recommended for Quebec.
  - iii – Should the other provinces not wish to avail themselves of such a distribution, powers related to this additional role and responsibility of Quebec should be allocated to Quebec alone.
36. In addition to these objectives, roles and responsibilities, the distribution should take account of the five following considerations:
  - i – general and particular concern;
  - ii – effectiveness, efficiency and responsiveness;
  - iii – common agreement;
  - iv – continuity;
  - v – overall balance.
37. The use of a list of exclusive powers for Parliament and a list of exclusive powers for provincial legislatures should be retained in a new Canadian constitution.
38.
  - i – Concurrent jurisdiction should be avoided whenever possible through a more precise definition of exclusive powers.
  - ii – Wherever powers are concurrent, a federal or provincial paramountcy should be stipulated.
39. The residual power should be assigned to the provincial legislatures.
40. In devising a new distribution of powers, the following steps should be taken:
  - i – broad areas of governmental activities should first be identified. Such broad areas might include external affairs, defence, economic policy, transportation, communications, natural resources, administration of justice and law enforcement, the status and rights of citizens, culture, health and welfare, habitat and the environment.
  - ii – within each of these broad areas, specific subject matters should be arranged in related groups. Under culture, for example might be grouped legislative powers over: language, education, schools, universities, archives, research, exchanges, copyrights, books, films, arts, leisure, marriage and divorce, property and civil rights.

- iii – jurisdiction with respect to each specific legislative power should then be attributed, exclusively or concurrently, to an order of government according to the criteria established in our previous recommendations. For example, regarding immigration, provincial legislatures should have exclusive jurisdiction with respect to settlement and integration of immigrants; the federal Parliament should have exclusive jurisdiction with respect to deportation of aliens and public safety; jurisdiction should be concurrent with provincial paramountcy with respect to selection criteria and levels of immigration to the province, and with federal paramountcy with respect to the recruitment of immigrants abroad and the admission of refugees.
  - iv – areas could be either exclusive, when all powers are attributed exclusively to the same order of government, as in the area of defence, or shared, when some of the powers are attributed exclusively to each of the two orders of government, or concurrently to both.
- 41. Both the central and provincial governments should be granted equal access to tax sources, with the exception that customs and excise taxes be an exclusive central power. The provincial right to use indirect taxation should be qualified to ensure that the impact of such taxes do not fall upon persons outside the taxing province.
  - 42. i – An emergency power should be assigned expressly by the constitution to the central government, for both wartime and peacetime.
    - ii – The wartime emergency power may be invoked in time of real or apprehended war, invasion or insurrection. The peacetime emergency power may be invoked only in highly exceptional circumstances.
    - iii – The proclamation of any emergency should receive approval of both federal houses, within a specified time limit, to remain in force.
    - iv – The proclamation should stipulate the reason(s) for the emergency and the intended duration of its application.
    - v – The Parliament of Canada should stipulate by legislation the powers it needs in cases of emergency; safeguards for provincial powers and for individual rights should vary depending on whether the country is facing a wartime or a peacetime emergency.
  - 43. The power of reservation and the power of disallowance should be abolished.
  - 44. The power to appoint the lieutenant-governor of each province should be vested in the Queen on the advice of the provincial premier.
  - 45. The declaratory power of Parliament should be retained, but its use should be subject to the consent of the province concerned.
  - 46. The spending power of the central government should be retained in matters of federal-provincial programs of interest to the whole of Canada, but its exercise should be subject to ratification by a reconstituted second chamber, and provinces should be granted the right to opt out of any such program, and where appropriate receive fiscal compensation.

### Federal-provincial relations and the Senate (Chapter 7)

47. The Senate should be abolished and replaced by a new second chamber of the Canadian Parliament to be called the Council of the Federation.
48.
  - i – The Council should be composed of delegations representing the provincial governments and therefore acting under instruction; the provincial delegations could be headed by a delegate of cabinet rank.
  - ii – The Council should be composed of no more than 60 voting members, to be distributed among provinces roughly in accordance with their respective population up to a maximum of one-fifth of the Council, and with weighting to favour provinces having less than 25 per cent of the country's population. Any province which has at any time had 25 per cent of the population (such as Quebec and Ontario) should be guaranteed one-fifth of the Council seats in perpetuity.
  - iii – In addition, central government cabinet ministers should be non-voting members so that they have the right to present and defend central government proposals before the Council and its committees.
49. The Council should not have the power to initiate legislation, except in the case of bills proposing constitutional amendments; and its decisions should not be regarded as expressions of confidence or non-confidence, since the government should remain responsible to the House of Commons alone.
50. The scope of the powers of the Council should be the following:
  - i – legislation and treaties within exclusive federal jurisdiction should not require the approval of the Council.
  - ii – proposed federal legislation and articles of treaties deemed to belong to the category of powers described as concurrent with federal paramountcy should be subject to a suspensive veto of short duration by the Council.
  - iii – proposed federal legislation deemed to belong to the category of powers described as concurrent with provincial paramountcy should be subject to a suspensive veto of a longer duration by the Council, except in the case of measures implementing bilateral agreements between the federal government and one or more provincial governments.
  - iv – the ratification of treaties, or parts of treaties, which deal with matters within provincial jurisdiction should require the approval of a majority of the provinces in the Council, on the understanding that legislative measures implementing such treaties are to remain within provincial jurisdiction.
  - v – federal initiatives in areas of provincial jurisdiction that are based on the federal spending power, whether they are to be cost-shared or financed fully from federal funds (with the exception of expenditures related to equalization) should require a two-thirds majority in the Council.
  - vi – if a province chooses not to participate in a program for which wide provincial consent has been demonstrated, the central government should be required to pay the government of that province a sum equal to the amount it would have cost the central government to implement the program in the province.



vii – a proclamation of a state of emergency, in either peacetime or wartime circumstances, should require, in addition to confirmation by the House of Commons, confirmation by the Council by at least a two-thirds majority.

51. The Council should be used as a forum for the discussion of general proposals and broad orientations arising from conferences of the first ministers on the economy and any other proposals the conference of first ministers may so designate, or any other matters of concern to the members of the Council itself.
52. Federal appointments to the Supreme Court, to major regulatory agencies such as the Canadian Radio-Television Commission, the Canadian Transport Commission and the National Energy Board, and to central institutions such as the Bank of Canada and the Canadian Broadcasting Corporation, should require the approval of the appropriate committee of the Council.
53. To determine the classification of a bill or treaty and hence the powers that the Council may exercise, a permanent committee should be created and be composed of the Speakers and some members from both the House of Commons and the Council.
54. i – The conference of first ministers should be convened annually, unless a simple majority of governments disapprove.  
ii – Additionally, first ministers' conferences should be held at the request of any government which secures the agreement of a simple majority of the other ten.
55. A federal-provincial committee on intergovernmental policy issues should be established with a membership of the eleven ministers responsible for intergovernmental affairs.
56. A permanent intergovernmental committee of officials and experts working under the conference of the first ministers should be established to study policy and program duplication on a continuing basis.
57. In order to make federal-provincial relations subject to continuous scrutiny by the legislatures, standing committees should be established in the House of Commons and in all provincial legislatures to review the activities of the major federal-provincial conferences.

### **The Supreme Court and the judicial system (Chapter 7)**

58. The existence and independence of the judiciary at both the central and the provincial orders of government should be recognized as a fundamental principle of Canadian federalism and be entrenched in the constitution.
59. i – The existence and composition of the Supreme Court of Canada, and the mode of appointment and removal of its judges, should be entrenched in the constitution.

- ii – The Supreme Court should be composed of eleven judges, five of whom are to be chosen from among civil law judges and lawyers, and six from among common law judges and lawyers, having regard, in the latter case, to regional distribution.
  - iii – The judges of the Supreme Court should be nominated for appointment by the governor in council, following consultation with the attorney general of Quebec with respect to the civil law candidates and with the attorneys general of all other provinces with respect to the common law candidates; the nominations should be ratified by the appropriate committee of the Council of the Federation.
  - iv – The judges of the Supreme Court should only be removed from office by the governor in council following a joint address of both Houses of Parliament.
  - v – The chief justice of the Supreme Court should be chosen by the governor in council, for a non-renewable term, from among the members of the Court, in alternation between a common law judge and a civil law judge.
60. The Supreme Court should remain a court with general appellate jurisdiction in both federal and provincial law.
61. The Supreme Court should retain its jurisdiction with respect to references, but provincial governments should have the same right as the central government to refer constitutional matters directly to the Supreme Court.
62. The Supreme Court should be divided into three benches, one of provincial jurisdiction which would be subdivided into a Quebec law section and a common law section, one of federal jurisdiction, and one of constitutional jurisdiction; the constitutional bench should be composed of all members of the Court.
63. Arrangements should be made for the reimbursement of the travelling costs of parties to and from the Supreme Court, whenever the Court is of the opinion that the situation warrants it.
64. All provincial judges should be appointed by the provincial governments concerned, but, with respect to higher court judges, only after consultation with the central government; and Federal Court judges should continue to be appointed by the central government.

### **Constitutional change and adaptation (Chapter 7)**

65. Articles of the constitution pertaining to:
- the distribution of legislative and executive powers
  - the constitution of both central houses, the existence and composition of the Supreme Court of Canada, and the method of appointment and removal of its judges
  - the offices of governor general and lieutenant governor
  - the entrenched list of fundamental rights

— the entrenched linguistic rights

— the amendment formula

should be amendable by the following process:

- i – a bill formulating an amendment should be initiated in either the House of Commons or in the Council of the Federation and passed by a majority in the House of Commons and by a majority of votes in the Council;
- ii – ratification of the proposed amendment should be through a Canada-wide referendum requiring approval by a majority of electors voting in each of four regions constituted by the Atlantic provinces, the province of Quebec, the province of Ontario, and the western provinces and territories; the above list of regions should be modified, if necessary, to include as a separate region any other province that might have, at any point in time, at least 25 per cent of the Canadian population.

66. Parliament should have the power to amend other articles of the constitution, except those concerned with the constitution of the provinces, which should be amendable only by each provincial legislature.

67. A new constitution should recognize the right of the central and provincial government to delegate to each other, by mutual consent, any legislative power, it being understood that such delegation should be subject to periodical revision and be accompanied, where appropriate, by fiscal compensation.

### **Electoral reform and the House of Commons (Chapter 7)**

68. In order to establish a better balance between the number of votes and the number of seats obtained by each political party in different regions and provinces, the current mode of election to the House of Commons should be modified by introducing an element of proportionality to complement the present simple-majority single-member constituency system.

69. i – The number of members in the House of Commons should be increased by about 60.

ii – These members should be selected from provincial lists of candidates prepared by the federal parties in advance of a general election, with the seats being distributed between parties on the basis of percentages of popular votes.

70. i – The committee system in the House of Commons should be modified and strengthened.

ii – The government should make more extensive use of special committees of the House of Commons to conduct in-depth studies of major Canadian issues upon which central government legislation or executive decisions may eventually be required.

### **Individual and collective rights (Chapter 7)**

71. The Canadian constitution should entrench a Declaration of Rights.
72. The Declaration of Rights should include the usual political, legal, economic and egalitarian rights.
73. The entrenched collective rights should include the language rights listed in recommendations 1, 2, and 4 and the right of Parliament and provincial legislatures to adopt special measures to benefit native peoples.
74. The basic individual and collective rights on which the central and provincial governments are in agreement should be entrenched in the constitution.
75. In those cases where the central and provincial governments have agreed, additional rights, which contain a clause permitting exceptions where so specified in a statute, should be entrenched in the constitution.







### P.C. 1977-1910

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 5 July, 1977

The Committee of the Privy Council, having had before it a report of the Right Honourable Pierre Elliott Trudeau, the Prime Minister, concerning Canadian unity, advise that

The Honourable Jean-Luc Pepin of Ottawa, Ontario

The Honourable John Parmenter Robarts of Toronto, Ontario

Mr. Richard Cashin of St. John's, Newfoundland

Dr. John Evans of Toronto, Ontario

Mrs. Muriel Kovitz of Calgary, Alberta

Mayor Ross Marks of Hundred Mile House, British Columbia

be appointed Commissioners under Part I of the Inquiries Act to enquire into questions relating to Canadian unity. During the course of their inquiry, the Commissioners shall

- a) hold public hearings and sponsor public meetings to ascertain the views of interested organizations, groups, and individuals;
- b) work to support, encourage, and publicize the efforts of the general public, and particularly those of non-governmental organizations, with regard to Canadian unity;
- c) contribute to the knowledge and general awareness of the public the initiatives and views of the Commissioners concerning Canadian unity;
- d) assist in the development of processes for strengthening Canadian unity and be a source of advice to the government on unity issues; and
- e) enquire into any other matter concerning national unity that may be referred to the Commission by His Excellency in Council.

The Committee further advise that the Commissioners

- a) be known as the Task Force on Canadian Unity;
- b) be authorized to exercise all of the powers conferred upon them by section 11 of the Inquiries Act and be assisted to the fullest extent by departments and agencies;

- c) adopt such procedures and methods as they may from time to time deem expedient for the proper conduct and conclusion of the inquiry within one year and sit at such times and in such places in Canada as they may decide from time to time;
- d) be authorized to engage the services of such counsel, staff and technical advisers as they may require at rates of remuneration and reimbursement to be approved by the Treasury Board;
- e) file with the Dominion Archivist the papers and records of the Commission forthwith after the conclusion of the inquiry; and
- f) that the Honourable Jean-Luc Pepin and the Honourable John Parmenter Robarts be designated as Co-Chairmen of the Commission.

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P.M. PITFIELD

CLERK OF THE PRIVY COUNCIL—LE GREFFIER DU CONSEIL PRIVÉ

**P.C. 1977-2361**

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 24 August, 1977

The Committee of the Privy Council, on the recommendation of the Right Honourable Pierre Elliott Trudeau, the Prime Minister, advise that Mrs. Solange Chaput-Rolland, of the City of Montreal, in the Province of Quebec, be appointed a Commissioner, under Part I of the Inquiries Act, of the Commission of inquiry into questions relating to Canadian Unity, known as the Task Force on Canadian Unity, established by Order in Council P.C. 1977-1910 of 5th July, 1977.

CERTIFIED TO BE A TRUE COPY—COPIE CERTIFIÉE CONFORME

P.M. PITFIELD

CLERK OF THE PRIVY COUNCIL—LE GREFFIER DU CONSEIL PRIVÉ

**P.C. 1977-2362**

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 24 August, 1977

The Committee of the Privy Council, on the recommendation of the Right Honourable Pierre Elliott Trudeau, the Prime Minister, advise that Mr. Gérald A. Beaudoin, of the City



of Hull, in the Province of Quebec, be appointed a Commissioner, under Part I of the Inquiries Act, of the Commission of inquiry into questions relating to Canadian Unity, known as the Task Force on Canadian Unity, established by Order in Council P.C. 1977-1910 of 5th July, 1977.

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P.M. PITFIELD

CLERK OF THE PRIVY COUNCIL—LE GREFFIER DU CONSEIL PRIVÉ

### **P.C. 1978-573**

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 28 February, 1978

The Committee of the Privy Council, on the recommendation of the Right Honourable Pierre Elliott Trudeau, the Prime Minister, advise that Dr. Ronald L. Watts of Kingston, Ontario, be appointed a Commissioner, under Part I of the Inquiries Act, of the Commission of inquiry into questions relating to Canadian Unity, known as the Task Force on Canadian Unity, established by Order in Council P.C. 1977-1910 of 5th July, 1977, vice Dr. John Evans whose resignation has been accepted.

CERTIFIED TO BE A TRUE COPY—COPIE CERTIFIÉE CONFORME

P.M. PITFIELD

CLERK OF THE PRIVY COUNCIL—LE GREFFIER DU CONSEIL PRIVÉ







### MANDATE

The mandate of the Task Force on Canadian Unity has three basic elements:

- a) "To support, encourage and publicize the efforts of the general public and particularly those of (voluntary) organizations, with regard to Canadian unity";
- b) "To contribute the initiatives and views of the Commissioners concerning Canadian unity";
- c) "To advise the Government (of Canada) on unity issues".

### INTRODUCTION

The Task Force is committed to a Canadian federation, a system with the authority of the state shared by two orders of government, each sovereign and at the same time committed to cooperative association with the other, under a constitution. We believe that such a system is the one best suited to the diversity of our founding peoples and to the nature of our geographic, social and economic environments.

The Task Force also recognizes that Canada and its present federal system are under great stress. The creation of the Task Force is itself a testimony to this. All regions of Canada are reflecting and expressing this malaise. The most pressing questions are being raised in Quebec and the Task Force intends to give these high priority. Nevertheless, the concerns of other regions are vitally important and will be given our full attention.

The Task Force has been given a clear mandate by the Government to develop its own initiatives and ideas and we intend to do this. It is our intention to assemble concepts and policies which could constitute some of the elements of a third option for Canada. The Members of the Task Force do not feel bound by existing legislation and practices nor are they committed to views of any federal or provincial political party. Our mandate requires us to advise the Government and we will do so but we will also make our views public, not seeking conflict with any groups, but aware that our autonomy is essential to our credibility and usefulness.

We intend to function in a spirit of receptiveness and conciliation. We will work closely with the Canadian people. Throughout the period of our mandate, we intend to carry on a conversation with citizens of all regions and with experts in all disciplines, listening, attempting to understand, discussing both old and new concepts. We will be mindful of and will solicit the views of the federal and all provincial governments.

In accordance with our mandate, we intend to listen to and provide a forum for those associations of all kinds which are specifically searching for the terms of a better Canada. Such efforts represent a spontaneous and generous spirit which must be encouraged and



which can provide Canadians with a very useful instrument for the consideration of our problems.

The Task Force will learn a great deal from these organizations and will give particular encouragement to those who wish to think about changes which can improve our political, social and economic systems. We will encourage such policy formation in every way and particularly through the provision of speakers and publications which might stimulate discussion.

### ACTIVITIES OF THE TASK FORCE

Within the period of our mandate and within the overall framework of a dialogue with the Canadian people, we intend to do four things. To some extent, these activities will be taking place concurrently.

First, we intend to listen and attempt to understand the real concerns of all Canadians on the functioning of our social, economic and political institutions as they relate to our mandate.

Secondly, while we recognize the existence of tensions and the need for reforms, we intend to point out the positive aspects of the Canadian experience, both material and emotional, its flexibility and its potential for improvement under the pressure of enlightened public awareness.

Thirdly, we hope to be able to inform the Canadian people effectively about the complex issues at stake in creating a more satisfying country. We propose to clarify the options available and the advantages and disadvantages related to them.

Fourthly, we intend to make recommendations for changes in structures, concepts and attitudes which are required in order to make our Canadian institutions more consistent with the needs of our times.

### TIMETABLE

During the early months of the life of the Task Force, the emphasis will be on listening. We intend to visit centers in all the Canadian provinces to discuss the issues, face to face, with the public. In this way, we will acquire a greater sensitivity to the current opinions and feelings of Canadians. Concurrently, the staff of the Task Force will be studying and analyzing the key issues in the unity debate in order to prepare background papers on some major aspects of our current problems and the range of possible improvements which might be made.

During the second phase of the Task Force's work the emphasis will be on study and consultation with specialists. The Task Force and its staff will discuss the issues in an attempt to assemble concepts and policies which will provide Canadians with some new directions. Concurrently with this period of study, the Task Force intends to publish information papers on important issues for the Canadian people outlining the options which are available.

## The Role of the Task Force

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During the third and final period of the Task Force's life, the Members plan to integrate their views and propose objectives and policies to the Government of Canada and to the Canadian people for their consideration.

The Task Force expects, in the months ahead, to make a contribution to a better understanding and resolution of our current problems. Where these problems are more perceived than real, we intend to promote understanding. Where they are more real than perceived, we intend to promote change.

And we earnestly ask for the understanding and support of our fellow citizens.

September 1, 1977.









## Appendix 3

## Acknowledgements

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We wish to extend special thanks to the following persons who served on the Task Force staff and contributed to its work:

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Executive Secretary to the Task Force:	Ratna Ray
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300









